

VICTOR FARINELLI

5/9/2014

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARK VEASEY, et al.,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	Civil Action Number
	§	2:13-cv-193(NGR)
	§	
	§	
RICK PERRY, et al.,	§	
	§	
Defendants.	§	

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30(b)(6) DEPOSITION OF  
THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
VICTOR FARINELLI  
MAY 9, 2014

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ORAL DEPOSITION OF VICTOR FARINELLI, produced as a witness at the instance of the United States of America, and duly sworn, was taken in the above-styled and numbered cause on May 9, 2014, from 9:02 a.m. to 1:42 p.m., before Melody René Campbell, CSR in and for the State of Texas, reported by method of machine shorthand, at the Price Daniel Building, 209 West 14th Street, Austin, Texas, pursuant to Notice and Subpoena and the Federal Rules of Civil Procedure.

VICTOR FARINELLI

5/9/2014

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VICTOR FARINELLI

5/9/2014

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23  
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25

## I N D E X

Page

## EXAMINATION

By Mr. Freeman.....	5
By Mr. Doggett.....	157
CHANGES AND SIGNATURE.....	172
REPORTER'S CERTIFICATE.....	173

## E X H I B I T S

No.	Description	Page
-----	-------------	------

106	Notice	13
107	38 TexReg 5416 Proposed Rules 08/23/13	24
108	38 TexReg 7307 10/18/13 Adopted Rules	26
109	Birth Certificate for EIC	68
110	Sample of EIC Birth Certificate	71
111	TAC Title 25, 181.28	94
112	Remote Front Office: Birth Certificate Issuance user Guide	100
113	Application for Election Identification Birth Certificate	102
114	List of Remote Birth Certificate Access Sites	111
115	List of Offices with Remote Access	119
116	Information Re: Birth Certificate for Election Identification	143
117	12/24/13 E-Mail from TXHHS to Derek Johnson re: EIC Alert	146

VICTOR FARINELLI

5/9/2014

4

## E X H I B I T S - Cont'd

No.	Description	Page
118	10/14/13 Memo from Geraldine Harris to Local Registrars and County Clerks re: Use of Election Certification Stamp on Birth Certificates for Local Registrars Offices not Linked to the State Vital Statistics Office Via the Remote Birth Access System	147
119	08/07/13 E-Mail from Joe Peters to Robert Bodisch re: About Those Free Voter ID Cards - Few Sign Up, With Attachment	150
120	U.S. Census Bureau American FactFinder, Place of Birth by Nativity and Citizenship Status	154

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VICTOR FARINELLI

5/9/2014

5

1 VICTOR FARINELLI,  
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. FREEMAN:

5 Q. Sir, could you state your name for the  
6 record.

7 A. Victor Anthony Farinelli.

8 Q. My name is Daniel Freeman, and I represent  
9 the United States in this litigation.

10 MR. FREEMAN: And if others could  
11 take a moment to introduce themselves for the  
12 record.

13 MR. DOGETT: Robert Doggett, Texas  
14 Rio Grande Legal Aid, for the Ortiz plaintiffs.

15 MR. BRAY: Timothy Bray, Deputy  
16 General Counsel for the Department of State Health  
17 Services.

18 MR. SCOTT: John Scott. I'm with the  
19 AG's office in Texas, and I'm representing Health  
20 and Human Services witnesses for the 30(b)(6)  
21 deposition.

22 Q. (BY MR. FREEMAN) Mr. Farinelli, have you  
23 ever been deposed before?

24 A. No.

25 Q. So let me explain how a deposition works.

1 It's a question and answer. And I will ask the  
2 questions, and, in general, you will give the  
3 answers, unless you don't understand my questions, in  
4 which case you can ask me a question back,  
5 essentially.

6 And the court reporter is here to take  
7 a record, and so we need to speak rather than our --  
8 we need to -- rather than gesture. Just like you  
9 just nodded there --

10 A. Yes.

11 Q. -- that doesn't work. Okay. Just making  
12 sure you understand. So do you understand?

13 A. Yes.

14 Q. Okay. The purpose of this deposition is to  
15 record your full and complete testimony. Do you  
16 understand?

17 A. Yes.

18 Q. Okay. I may not always be clear, as I  
19 said. If you don't understand, just ask me to  
20 restate the question and I'll do my best to make it  
21 make more sense.

22 A. Okay.

23 Q. Great. If you need a break, let me know.  
24 We will finish the question that's pending and then  
25 we'll see about a break. Does that work?

VICTOR FARINELLI

5/9/2014

7

1 A. Okay.

2 Q. It's important that we don't talk over each  
3 other, because that makes it very hard for the court  
4 reporter. So I will make sure not to ask a question  
5 until you're done answering. And will you try to  
6 wait until I've finished asking my question before  
7 you respond?

8 A. Yes.

9 Q. Great. If you need more water or -- there  
10 isn't coffee here, but if you need coffee, similarly,  
11 please wait until we're done with whatever question  
12 is floating out there, finish that up, we can get you  
13 more water, figure out where we can find you some  
14 coffee. Sound good?

15 A. Yes.

16 Q. Great. If you want to talk to your  
17 attorney, that's fine. But, again, if there's a  
18 question pending or if you're in the middle of an  
19 answer, I need you to finish that up first and then  
20 you can talk to your attorney. Does that work?

21 A. Yes.

22 Q. Great. Sometimes you might remember  
23 something later in the day about a question that was  
24 asked earlier. If that happens, will you let me know  
25 and we'll add it to the record?

VICTOR FARINELLI

5/9/2014

8

1 A. Yes.

2 Q. Great. And I'll give you a few chances to  
3 do that along the way as well.

4 Also, sometimes when we've been  
5 talking for a while, you may realize that a prior  
6 answer you gave was not completely accurate. If you  
7 realize that, will you let me know?

8 A. Yes.

9 Q. Great. Sometimes while you're answering,  
10 you may think of a document that would help you  
11 remember or help you answer more accurately, just  
12 refresh your recollection. If you do, will you let  
13 me know?

14 A. Yes.

15 Q. I have a few documents here. Your counsel  
16 may have some documents. I'm sure their computer is  
17 somewhere if you really need something. We'll do our  
18 best.

19 There are a few totally standard  
20 questions that I have to ask that may sound a little  
21 odd. Are you on any medication or drugs of any kind  
22 that would make it difficult for you to understand my  
23 questions or to answer them?

24 A. No.

25 Q. Have you had anything alcoholic to drink in



1 the last eight hours?

2 A. No.

3 Q. Are you at all sick today in a way that  
4 would make it difficult for you to understand my  
5 questions or to answer them?

6 A. No.

7 Q. Is there any other reason you can think of  
8 why you wouldn't be able to answer my questions fully  
9 and accurately?

10 A. No.

11 Q. And last thing. I'm going to remind you  
12 that you're under oath and subject to federal  
13 penalties for giving false or misleading testimony,  
14 so it's important to answer my questions truthfully,  
15 accurately, and completely. Do you understand?

16 A. Yes.

17 Q. Any questions at this time?

18 A. No.

19 Q. Great. Do you understand that you are  
20 testifying on behalf of the Texas Health and Human  
21 Services Commission and not in your individual  
22 capacity?

23 A. Yes.

24 Q. What is your position?

25 A. I am the electronic registration manager of

1 the Department of State Health Services Vital  
2 Statistics Unit.

3 Q. And what are your responsibilities as the  
4 electronic records manager?

5 A. With the Vital Statistics, we have an  
6 electronic registration system. I manage and oversee  
7 the registration of vital events in those areas.

8 Q. Okay. And who do you report to?

9 A. The director, Ms. Geraldine Harris.

10 Q. And what is her title?

11 A. Director 1, State Registrar of the Vital  
12 Statistics Unit.

13 Q. And what does director 1 mean?

14 A. She's -- that's her classification.

15 Q. Okay. And do you know who she reports to?

16 A. She reports to the chief operating officer,  
17 Ed House.

18 Q. Ed --

19 A. Ed House.

20 Q. And that's at the Vital Statistics Unit?

21 A. That's for the Department of State Health  
22 Services.

23 Q. Okay. And how many individuals report to  
24 you?

25 A. 25.

1 Q. And what types of positions do those  
2 individuals have?

3 A. Part -- admin 3s, admin 2s, which are --  
4 have -- they process requests, complete delayed  
5 registrations.

6 I also manage the electronic  
7 registration help desk, which helps the -- our  
8 customers with electronic registration and the  
9 communications department.

10 Q. Okay. How long have you held your  
11 position?

12 A. Current position, eight months.

13 Q. Okay. And what is your educational  
14 background?

15 A. High school, some college.

16 Q. And what is your employment background?

17 A. I've been with the Department of State  
18 Health Services Vital Statistics Unit for 12 years.

19 Prior to being manager, I was with the  
20 Field Services for five years and worked in paternity  
21 registry -- I mean paternity requests in -- for  
22 approximately a year, and worked my way up through  
23 there.

24 Prior to that, I was a chef with --  
25 through various restaurants.

1 Q. And what do you mean by field services?

2 A. Field services is our contact between our  
3 service and source providers and the State. So they  
4 represent the State Registrar in 2R -- service and  
5 source providers: local registrars, funeral homes,  
6 doctors, birth registrars.

7 Q. Those last two categories you gave, those  
8 are service and source providers?

9 A. Yes.

10 Q. Okay. Just trying to make a clear record.  
11 And besides what we've discussed, no  
12 other positions working for the State?

13 A. With the State, just worked my way up. I  
14 started off as a clerk 3, just doing filing; clerk 4,  
15 again, filing. And then admin 2, processing requests  
16 that come in. And then program specialist 1, and  
17 that was a team lead position; and then moved over to  
18 field services as a field rep, representing the State  
19 Registrar to our locals. And then -- and then the  
20 manager.

21 Q. Okay. Great. When did you first learn  
22 that you would be testifying on behalf of the State?

23 A. Don't recall the exact date, but it was a  
24 couple of weeks ago.

25 Q. Okay. And are you represented by counsel

1 here today?

2 A. Yes.

3 Q. And who is representing you?

4 A. The Office of Attorney General and our  
5 Office of General Counsel with the Department of  
6 State Health Services.

7 Q. And that's Mr. Scott to your left. And I  
8 forget the other gentleman's name. I'm sorry.

9 MR. DOGETT: Tim Bray.

10 MR. FREEMAN: Okay. Great. Just  
11 wanted to make it clear.

12 Q. (BY MR. FREEMAN) If one of them objects to  
13 a question that I ask, you may answer after that  
14 objection, unless they instruct you not to answer  
15 specifically. So we may do our lawyer thing, but  
16 just keep going unless they specifically instruct you  
17 not to answer. Does that make sense?

18 A. Yes.

19 Q. Okay. Great.

20 MR. FREEMAN: Mark this as  
21 Exhibit 106.

22 (Exhibit Number 106 marked.)

23 Q. (BY MR. FREEMAN) Sir, have you seen this  
24 document before?

25 A. Yes.

1 Q. And what is this document?

2 A. It is the deposition document for --  
3 requesting that we provide information regarding the  
4 electronic -- I mean the election identification  
5 card.

6 Q. Okay. If you could turn to Exhibit A.  
7 Now, I've had some discussions with your counsel, and  
8 there are some questions that are covered by these  
9 topics that we are probably going to hold off on for  
10 another witness. But I just would like to go through  
11 them and understand what you have knowledge of as we  
12 go through.

13 So if you could take a look at  
14 Topic 1.

15 A. Uh-huh.

16 Q. Looking at Topic 1, who at HHSC knows the  
17 most about Topic 1?

18 A. Myself and the State Registrar.

19 Q. The State Registrar?

20 A. Uh-huh.

21 Q. Who is the State Registrar?

22 A. Geraldine Harris.

23 Q. And did you talk to Ms. Harris in  
24 preparation for this deposition?

25 A. Briefly.

1 Q. And did Ms. Harris provide you with any  
2 documents?

3 A. No.

4 Q. If you could take a look at Topic 2. Who  
5 at HHSC knows the most about Topic 2?

6 MR. SCOTT: If you know.

7 Q. (BY MR. FREEMAN) If you know.

8 A. Myself.

9 Q. Did you talk to anyone else specifically  
10 about Topic 2 in preparation for this deposition?

11 A. Just my attorneys.

12 Q. Okay. And I'm never going to ask for what  
13 you said to your attorneys. That's out of bounds.  
14 Just -- and Mr. Scott said a moment ago, "If you  
15 know." That's essentially part of every question.  
16 If you don't know, it's a perfectly fair answer to  
17 say, "I don't know." It's always to the extent of  
18 your knowledge.

19 A. Uh-huh.

20 Q. If you could take a look at Topic 3. We  
21 will not be discussing, at this deposition --  
22 sorry -- the comments on the proposed rule, and we  
23 will not be discussing communications prior to the  
24 adoption of that rule with local registrars and  
25 county clerks. But it's my understanding --

1 MR. FREEMAN: And, Mr. Scott, if  
2 you'll let me know if I have this wrong at all --  
3 that everything else on Topic 3 should be okay for  
4 this deposition?

5 MR. SCOTT: Yes.

6 Q. (BY MR. FREEMAN) Okay. If you could take  
7 a look at Topic 3. To your knowledge, who at HHSC  
8 has the most knowledge concerning Topic 3?

9 A. The -- to the best of my knowledge, besides  
10 myself, would be the Office of General Counsel.

11 Q. And who at Office of General Counsel would  
12 you know of specifically?

13 A. Mark Connolly and Lisa Hernandez.

14 Q. And are they -- do they work at the Office  
15 of General Counsel, is that for the Department of  
16 State Health Services?

17 A. It's for the Department of State Health  
18 Services.

19 Q. And are you prepared to testify today  
20 concerning Topic 3, to the extent of your knowledge?

21 A. To the extent of my knowledge, yes.

22 Q. Okay. And who at HHSC would know the most  
23 about Topic 4?

24 A. Myself and the State Registrar. I would  
25 say most of the employees who process requests, too.



1 Q. Individual frontline employees?

2 A. Uh-huh.

3 Q. Okay.

4 MR. SCOTT: Yes, no, something.

5 A. Yes. Oh, I'm sorry.

6 Q. (BY MR. FREEMAN) Thank you.

7 A. That was a question.

8 Q. It was. It generally will be.

9 And how about Topic 5, who at HHSC  
10 would know the most about Topic 5?

11 A. Myself and the field services staff.

12 Q. Okay. And just so we're clear, when I say  
13 HHSC, I mean the Texas Health and Human Services  
14 Commission. Do you understand?

15 A. Yes.

16 Q. Great. Okay. And so am I correct that  
17 you're prepared to talk -- to discuss all five of  
18 these topics, to the extent of your knowledge?

19 A. Yes.

20 Q. And with the limitation that I mentioned  
21 before regarding Topic 3?

22 A. Yes.

23 Q. Great. Talking with Geraldine Harris, what  
24 else did you do to prepare for this deposition?

25 A. Talked to my general counsel of Department

1 of State Health Services and also with the Attorney  
2 General's Office.

3 Q. And was anyone else present at any of those  
4 meetings?

5 A. Another individual, Albert Rivera, who used  
6 to be the manager of field services.

7 Q. And he's no longer the manager of field  
8 services?

9 A. No.

10 Q. When did he leave HHSC?

11 A. He's still with HHSC. He works for  
12 immunization.

13 Q. And who is the new manager of field  
14 services?

15 A. I am the interim manager of field service.

16 Q. I see. So currently you're wearing two  
17 hats?

18 A. Correct.

19 Q. Got it.

20 Did you review any documents when  
21 preparing for this deposition?

22 A. Yes.

23 Q. And what documents did you review?

24 MR. SCOTT: We have brought all those  
25 that he reviewed with us here today.

1 MR. FREEMAN: Okay.

2 MR. SCOTT: So we can mark them as an  
3 exhibit.

4 MR. FREEMAN: That is that pile of  
5 documents in front of you there?

6 MR. SCOTT: Yes.

7 MR. FREEMAN: Okay. Sometime on a  
8 break, I will want to take a look at those.

9 Q. (BY MR. FREEMAN) And did you review any  
10 documents, other than the large pile of documents  
11 currently sitting in front of your attorney?

12 A. No.

13 Q. Great. Thank you.

14 MR. FREEMAN: And, Mr. Scott, will  
15 you produce those subject to the agreement  
16 concerning production format at a later date?

17 MR. SCOTT: Yes.

18 MR. FREEMAN: No need for an  
19 additional request?

20 MR. SCOTT: Nope.

21 MR. FREEMAN: Much appreciated.

22 Q. (BY MR. FREEMAN) Did you speak with anyone  
23 else about your deposition today?

24 A. Just the State Registrar -- not  
25 specifically about the deposition information itself,

1 but just the State Registrar, to let her know I was  
2 coming to the deposition.

3 Q. Makes sense. Thank you.

4 Have you ever testified in court  
5 before?

6 A. Not in court. SOAH hearing.

7 Q. What hearing?

8 A. A SOAH hearing.

9 Q. What is a SOAH hearing?

10 A. It's for -- I can't --

11 MR. SCOTT: State Office of  
12 Administrative Hearings.

13 Q. (BY MR. FREEMAN) And what did that relate  
14 to?

15 A. The -- for a hearing against a doctor for  
16 the Texas Medical Board, for a violation of a statute  
17 and rule; and for the Texas Funeral Service  
18 Commission against a funeral director for a violation  
19 against statute and rule.

20 Q. And in those matters, were you a witness  
21 for the State of Texas?

22 A. Yes.

23 Q. Okay. Any other matters?

24 A. That's it.

25 Q. Okay. Have you ever personally been a

1 party to a lawsuit?

2 A. No.

3 Q. Any other involvement in a case in which  
4 the State of Texas was a plaintiff or a defendant?

5 A. No.

6 Q. And how were those SOAH hearings resolved?

7 A. I did not get feedback on what -- how those  
8 were resolved.

9 Q. Okay. Great.

10 Are you familiar at all with Senate  
11 Bill 14 from the 2011 regular session?

12 A. Yes.

13 Q. What is your understanding of Senate Bill  
14 14?

15 A. It requires that anyone that is wanting to  
16 vote would need a picture identification in order to  
17 vote.

18 Q. And if I refer to Senate Bill 14 as SB 14,  
19 will you understand that for purposes of this  
20 deposition?

21 A. Yes, sir.

22 Q. Great. Any other understandings that you  
23 have of SB 14?

24 A. No.

25 Q. Are you familiar with the term "election

1 identification certificate"?

2 A. No.

3 Q. I think earlier you said something along  
4 the lines of election identification card?

5 A. Correct.

6 Q. Okay. If I represent to you that the term  
7 that SB 14 uses for that card is an election  
8 identification certificate, can we understand that I  
9 mean essentially the same thing?

10 A. Yes.

11 Q. Okay. Do you understand what the  
12 relationship is between an election identification  
13 certificate and SB 14?

14 A. Yes.

15 Q. And what is that relationship?

16 A. If a voter cannot afford a picture ID, they  
17 can get this identification card, driver's license --  
18 they can get this certificate for free through the  
19 Department of Public Safety, to vote.

20 Q. Did you have any understanding of what an  
21 election identification certificate was prior to  
22 meeting with counsel?

23 A. Yes.

24 Q. Okay. How did you arrive at that  
25 understanding?

1 A. I had completed the bill analysis on that  
2 bill for the Department of State Health Services  
3 Vital Statistics Unit and provided that analysis to  
4 the State Registrar.

5 Q. And as part of what prior position did you  
6 conduct legislative analysis?

7 A. In the field services department, as a  
8 program specialist.

9 Q. Okay. And what parts of SB 14 did you  
10 conduct legislative analysis on?

11 A. On the whole bill. We had to review the  
12 whole bill to see if it had an impact on our agency.

13 Q. Okay. And did you determine that it did?

14 A. We determined that if the -- we had impact,  
15 it would be minimal.

16 Q. Okay. And why did you believe that the  
17 impact would be minimal?

18 A. Because they had removed the certificate of  
19 birth as a primary source of use for election  
20 purposes, as an identification.

21 Q. Okay. Any other ways that you saw SB 14  
22 affecting your department?

23 A. No.

24 Q. If I refer to an election identification  
25 certificate as an EIC, will you understand that for

1 purposes of this deposition?

2 A. Yes.

3 Q. Great. Do you have any understanding of  
4 the requirements to obtain an EIC?

5 A. That they will need -- as far as I know,  
6 they will need a supporting document in order to get  
7 that birth certificate; I believe a Social Security  
8 card.

9 Q. So a birth certificate is one of the forms  
10 of supporting documentation that an individual might  
11 need?

12 A. Yes.

13 MR. FREEMAN: Okay. If we could mark  
14 this as Exhibit 107.

15 (Exhibit Number 107 marked.)

16 Q. (BY MR. FREEMAN) And, again, we're going  
17 to limit how much we do discuss -- first, have you  
18 seen this document before?

19 A. Not this specific document.

20 Q. Do you know what this document is?

21 A. It appears to be from the Texas Registrar,  
22 which is what is used to publish proposed rules and  
23 changed rules to the Texas Administrative Code.

24 Q. But you've never seen this particular  
25 proposed rule before?



1 A. I've seen the proposed rule, but not this  
2 particular document as it's formatted.

3 Q. Okay. Did you see the proposed rule before  
4 it was sent to the Texas Registrar?

5 A. Yes.

6 Q. Okay. And when did you see it?

7 A. A couple of days ago.

8 Q. Okay. But you said you had seen it before  
9 it was --

10 A. Proposed. Yes, yes. So that was when --  
11 right before the rules were first put into place.

12 Q. Do you know who wrote this proposal?

13 A. No, I don't.

14 Q. And just looking at this, when is this  
15 document dated?

16 A. August 23rd, 2013.

17 Q. And if you look at the proposed rule, do  
18 you see when it was submitted to the office of  
19 Secretary of State? It's on the back.

20 A. Oh, August 12th of 2013.

21 Q. Thank you. Turning back to the front, can  
22 you review the explanation of the proposed  
23 regulation?

24 A. Clarify explanation.

25 Q. The background and purpose section, to be

1 specific.

2 A. Okay. The background, let's -- informs us  
3 that --

4 Q. I was just asking you to review it before  
5 questions.

6 A. Oh, I'm sorry.

7 Q. That's fine.

8 Am I correct that the Texas -- the  
9 executive commissioner of the Health and Human  
10 Services Commission wrote that the cost of a  
11 certified birth record may impose a barrier to a  
12 person who is required to produce a certified copy  
13 for the purpose of obtaining an EIC?

14 A. Yes.

15 Q. We can put this aside, but we will  
16 definitely be returning to it.

17 MR. FREEMAN: And if we could mark  
18 this as Exhibit 108.

19 (Exhibit Number 108 marked.)

20 Q. (BY MR. FREEMAN) Have you seen this  
21 document before?

22 A. Not this particular document, but I've seen  
23 the adopted rules.

24 Q. Okay. And so what is this document?

25 A. It's -- it is the publication in the Texas

1 Register for the publication of the approved rules.

2 Q. And do you know which specific approved  
3 rule this is?

4 A. To waive the fee for a certified copy of a  
5 birth certificate.

6 Q. And did you see the final adopted rule  
7 before it was published?

8 A. Yes.

9 Q. When did you first see it?

10 A. I don't have an exact date, but it was a  
11 few weeks before it was published.

12 Q. So sometime in September?

13 A. Yeah.

14 Q. Okay. And when is this adopted rule dated?

15 A. October 18th, 2013.

16 Q. And if you look to the back again, when was  
17 this adopted rule filed with the office of the  
18 Secretary of State? Last page.

19 A. October 1st, 2013.

20 Q. Thank you. Can you review again the  
21 background and purpose section? Just review and then  
22 I'll ask you a question in a moment.

23 A. Yes.

24 Q. Am I correct that the executive  
25 commissioner of the Health and Human Services

1 Commission took the position that the cost of a  
2 certified birth record would be paid by the person  
3 who is required to produce a certified copy for the  
4 purpose of obtaining an EIC?

5 A. Yes.

6 Q. And if you look at the comments about  
7 costs, on page 2, and the final response, am I  
8 correct that the executive commissioner took the  
9 position that the department believes that to the  
10 degree it may exercise -- reasonably exercise  
11 discretion over the matter, cost should not prevent  
12 anyone from obtaining an EIC who wants one?

13 MR. SCOTT: Objection; form.

14 A. Which one are you -- I'm not for sure which  
15 comment you're looking at.

16 Q. (BY MR. FREEMAN) Sure. So under comments  
17 concerning cost, and then there's response.

18 A. Okay. All right.

19 Q. The second sentence, am I correct that this  
20 states, "The department believes that to the degree  
21 it may reasonably exercise discretion over the  
22 matter, cost should not prevent anyone from obtaining  
23 an EIC who wants one"?

24 A. Yes.

25 Q. And is the premise of this statement that

1 the \$22 fee, the existing fee, could prevent someone  
2 from obtaining an EIC who wants one?

3 A. Yes.

4 Q. So original or certified copies of a birth  
5 record are available from HHSC or one of its  
6 components. Correct?

7 A. The Department of State Health Services or  
8 a local registrar.

9 Q. And does HHSC or one of its components ever  
10 assist individuals who need a birth certificate, but  
11 the only birth certificate that they could get is a  
12 Department of State certificate of live birth abroad?

13 A. We provide them with information on how to  
14 obtain that.

15 Q. And what information is that?

16 A. We direct them to the Department of State  
17 website on -- specifically the travel website  
18 regarding the certificate of U.S. citizen born  
19 abroad.

20 Q. And do you maintain any paper materials  
21 on-site regarding those?

22 A. No.

23 Q. Do you train your staff at all regarding  
24 the specific availability of those forms?

25 A. Yes.

1 Q. And do you train them regarding the cost of  
2 obtaining the certificate of live birth abroad?

3 A. No.

4 Q. Okay. And just so I'm very certain, an  
5 individual can't get a certificate of live birth  
6 abroad from HHSC or any of its components. Right?

7 A. No.

8 Q. Does HHSC or any of its components ever  
9 assist individuals to obtain a birth certificate if  
10 they were born in another state?

11 A. No.

12 Q. They don't even provide the same  
13 information they provide by the State Department  
14 certificate of live birth abroad?

15 A. Yes, we do provide that. We'll provide  
16 them with the address and contact information for --  
17 of the office where they should contact to obtain  
18 that.

19 Q. Okay. But no other assistance?

20 A. No.

21 Q. And there's no other specific information  
22 available in your office about any specific states or  
23 neighboring states?

24 A. No.

25 Q. Okay. And, again, you can put this aside

1 for now but we will swing back to it later.

2 When is a birth certificate originally  
3 issued in Texas?

4 A. Define issued.

5 Q. After -- after a child is born, when is the  
6 original record created?

7 A. The record is registered with the birth  
8 registrar, the person responsible for filing the  
9 record if a child is born in a hospital, that is, a  
10 birth registrar that is designated by that hospital  
11 administrator to file those records. It is required  
12 to file those within five days of the child's birth.

13 Q. So that's automatic and required?

14 A. Uh-huh.

15 MR. SCOTT: Is that a yes?

16 A. Yes. Sorry.

17 Q. (BY MR. FREEMAN) That's fine. And is a  
18 record created or do the parents automatically get a  
19 copy of that record?

20 A. Record is created, but they do not  
21 automatically get a copy of that record.

22 Q. Okay. But no one needs to request that the  
23 record is created? It's required by law?

24 A. Yes.

25 Q. Okay. In order to get a copy of that

1 record, do the parents have to specifically request  
2 it?

3 A. The parents or another qualified applicant.

4 Q. Okay. What is the ordinary process for the  
5 creation of a birth record when there's an  
6 in-hospital birth in Texas?

7 A. The child is born. The birth registrar,  
8 who is the designation person to file those records,  
9 gets the information about the birth certificate from  
10 the parents: name, the parents' names, and -- gets  
11 that information, gathers it, and then enters it into  
12 our electronic registration system. They enter it,  
13 certify that this is true and correct to the best of  
14 their knowledge, and transmit that information to our  
15 office, in which we actually print off a paper  
16 document and house it.

17 Q. Okay. So that goes directly to HHSC?

18 A. Yes.

19 Q. What is the role of the local county  
20 registrar in that process?

21 A. We have a dual registration system in the  
22 State of Texas --

23 Q. Okay.

24 A. -- where a copy is held at the State and  
25 then a copy is held at a local registrar's office,



1 which could be a county clerk, Justice of the Peace,  
2 or a municipality.

3 Q. So do you send -- by you I mean HHSC. Do  
4 you send that information to the local or is it  
5 submitted to both at the same time?

6 A. We send it to the local -- once we've filed  
7 it, it gets sent to the local for filing.

8 Q. Okay. What are the requirements for a  
9 parent or other qualified relative to obtain a copy  
10 of a child's birth certificate immediately after  
11 birth, as soon as the record is created?

12 A. They would have to either go into a local  
13 registrar's office and complete an application,  
14 provide picture identification, and pay a fee to get  
15 a certified copy.

16 They can also contact our office,  
17 either coming into our office, by mail or through  
18 Texas.gov, which is an online service they can  
19 request certified copies through.

20 Q. Okay. And we're going to discuss all of  
21 those different methods later.

22 Just specifically with regard to birth  
23 certificate immediately after a birth, is the cost  
24 the same as obtaining a birth certificate at any  
25 later point?

1 A. Yes.

2 Q. And do you know if there's any type of  
3 public assistance that's available specifically with  
4 regard to obtaining a birth certificate immediately  
5 after birth?

6 A. No.

7 Q. And do you know if Medicaid or any other  
8 type of medical-related program or health insurance  
9 covers that cost?

10 A. Not that I'm aware of.

11 Q. Okay. And the ID requirements, those are  
12 also the same as obtaining an ID -- or, excuse me,  
13 obtaining a birth certificate at a later date.  
14 Correct?

15 A. Correct.

16 Q. Okay. Are there circumstances in which a  
17 birth in Texas may occur but a birth record is not  
18 created?

19 A. Yes.

20 Q. What are those circumstances?

21 A. If by chance the parent accidentally had the  
22 child at home, the way the law is written, they're  
23 required to go to the local registrar's office and  
24 present documentation to prove that the child was  
25 born alive on the date stated, the mother was

1 pregnant, and the child was born in their  
2 registration district.

3 There are times that the parent  
4 doesn't realize that. They automatically think that  
5 the birth certificate will be filed somehow. And so  
6 there are times -- if it's not registered within five  
7 days, from five days to one year, it can still be  
8 filed on a regularly filed birth certificate. After  
9 one year, a law requires that it go -- they go  
10 through a delayed registration process.

11 Q. Just to be clear, the law requires  
12 submission by -- within five days. Correct?

13 A. Correct.

14 Q. Between five days and one year, you've  
15 broken the law, but it's still not a delayed  
16 submission?

17 A. It's considered a delayed, but the way the  
18 law is written, it can be still filed on a regular  
19 birth certificate from that point.

20 Q. And after one year --

21 A. You go through the delayed registration  
22 process and it -- it's a special certificate that is  
23 required for delayed registration.

24 Q. Okay. And you said that there are  
25 documents that must be submitted if there's a home

1 birth. What are those documents?

2 A. It depends on -- so proof that the child  
3 was born alive, some kind of document from a medical  
4 personnel, physician, or EMT, if an ambulance was  
5 called, to prove that the child is alive, was born  
6 alive.

7 Q. Okay.

8 A. Date stated. Generally, that's the same  
9 document because it has a date the child was born.  
10 Proof of pregnancy, some kind of document from a  
11 healthcare provider showing that the mother was  
12 pregnant. And then proof that the child was born in  
13 the registration district, some document showing  
14 where the mother was born -- or mother is a resident  
15 of.

16 Q. Okay. And that medical document that  
17 said -- so that the proof that the child was born  
18 alive, that generally requires -- or does that  
19 specifically require that there's a medical personnel  
20 of some kind? Who may sign that?

21 A. It's -- it's not a specific form that they  
22 complete. It's just a statement from them --

23 Q. Okay.

24 A. -- of the facts.

25 Q. But who is qualified to sign that?

1 A. Any medical personnel, a physician, EMT,  
2 registered nurse.

3 Q. Okay. And generally -- so generally, the  
4 parents will have to pay someone for the medical  
5 attention that is required to establish that the  
6 child was born alive. Correct?

7 A. Generally, yes. Sometimes they will -- it  
8 depends on the local registrar there accepting the  
9 documents. They may accept an affidavit of personal  
10 knowledge, but that's going to be up to them, what  
11 other supporting documents they will use.

12 Q. Okay. So that's up to the local, that's  
13 not HHSC's control?

14 A. We provide information in our Texas  
15 Administrative Code, but in the Texas Administrative  
16 Code it does specifically state any other form of  
17 supporting document that's acceptable by the local  
18 registrar.

19 Q. Okay. So they have discretion?

20 A. Uh-huh.

21 Q. Great.

22 MR. SCOTT: Yes.

23 A. Yes.

24 MR. FREEMAN: Thank you again.

25 Q. (BY MR. FREEMAN) Approximately how often

1 in the last ten years is a child born in Texas and  
2 no -- just no birth record is created?

3 A. I wouldn't have those -- percentage  
4 offhand.

5 Q. Who would know at HHSC, if anyone?

6 A. We would have to gather that information.

7 Q. Do you know historically whether that's  
8 changed over time, the number of people who are born,  
9 but no birth record is created at all?

10 A. Yes.

11 Q. And how has that changed over time?

12 A. We find that, from our experience, that  
13 individuals who were born in the '30s, '40s, and '50s  
14 may have been born at home and a record was never  
15 filed. With more modern -- with the advent of  
16 technology and information being out there, we're  
17 finding less with the newborns within the past ten  
18 years.

19 Q. Okay. Do you know if certain demographic  
20 groups historically were more likely to not have a  
21 birth record created?

22 A. Not that I'm aware of.

23 Q. Any racial groups?

24 A. Not that I'm aware of.

25 Q. Okay. Who would know this?

1           A.    We would have to perform a study to find  
2   that out.

3           Q.    Okay.   Do you have any idea, in the last  
4   ten years, how often no birth certificate is issued  
5   following creation of a birth record after a birth?  
6   So how often a child would be born, but their parents  
7   or relatives don't obtain the actual certificate?

8           A.    I wouldn't know.

9           Q.    Okay.   So you were mentioning earlier that  
10   at a hospital there would be a designated person who  
11   has to submit the records.   What is that person's  
12   technical role, title?

13          A.    They are -- the way the law is written, it  
14   says the hospital administrator or designee.   So they  
15   are the designee at the hospital, administrator.

16                   We, at the Vital Statistics office,  
17   generally refer to them as a birth registrar.   And  
18   then at that point they can get a birth registrar  
19   certification to perform that function.

20          Q.    Okay.   And you said if the child is born at  
21   home, it's the parents' responsibility.   Correct?

22          A.    Unless there is a midwife who was  
23   attending, and it's the midwife's responsibility at  
24   that point.

25          Q.    Okay.   And would a birth center be treated

1 similarly to a hospital?

2 A. Yes.

3 Q. Who is responsible if the child is born  
4 en route to the hospital?

5 A. En route to the hospital, if the child was  
6 not removed from the conveyance until the hospital,  
7 the hospital will file that record.

8 Q. Okay.

9 A. Because the place of birth is going to be  
10 where that child was first removed from the  
11 conveyance.

12 Q. Okay. So just to be clear, if they're in  
13 an ambulance on the way to the hospital, the child is  
14 born in the ambulance, and nobody opens the door and  
15 takes the child out until they get to the hospital,  
16 the child is technically born at the hospital?

17 A. Correct.

18 Q. Okay.

19 A. It's designated on the birth certificate as  
20 an en-route birth.

21 Q. Okay. I am going to learn a lot today.

22 And how about a foundling? Let's say  
23 a woman gives birth to a child, drops the child off  
24 at the front door of the church, who is responsible  
25 for making sure the birth record is created?



1           A.   Generally those children are brought to a  
2   hospital.   It is the position of the Department of  
3   State Health Services, in order to assist that child  
4   in -- to having a productive -- being a productive  
5   member of society, to be able to have a birth  
6   certificate to move forward, so we will file a birth  
7   certificate for that child as a foundling designated  
8   birth certificate so that that child, if -- it can be  
9   adopted at a later date at ease.

10          Q.   So HHSC actually creates the record  
11   without --

12          A.   We designate the hospital to go ahead and  
13   file those for the foundling.

14          Q.   Okay.   Thank you.

15          A.   Yes.

16          Q.   Is there any requirement -- you had  
17   mentioned five days before.   Is there any requirement  
18   related to a 15-day deadline for submission of  
19   records?

20          A.   Yes.   If the parents specifically ask that  
21   the birth certificate be delayed for naming purposes,  
22   for religious purposes, the birth registrar is to  
23   delay that no more than 15 days.   It's the parents'  
24   responsibility to come back to the birth registrar or  
25   the midwife who is responsible for filing the record,

1 and letting them know what that name is before the  
2 15th day.

3 Q. Great. Thank you.

4 What other information is gathered  
5 besides the name of the child, the name of the  
6 parents, and the date of the child's birth?

7 A. The parents' date of birth, the place of  
8 birth of the parent, and the address of the mother,  
9 which would include their street address, county,  
10 state, and city of residence.

11 Q. Do you gather the race of the mother?

12 A. Yes.

13 Q. And do you gather the race of the father?

14 A. Yes.

15 Q. How long has that information been  
16 gathered?

17 A. That information has been gathered -- it's  
18 been on the legal birth certificate since 1903.

19 Q. Okay.

20 A. To the best of my knowledge. I haven't  
21 looked at a 1903 in a while.

22 Q. That's fine. I appreciate it.

23 MR. SCOTT: But to clarify, it's no  
24 longer on a birth certificate itself.

25 MR. FREEMAN: I'll let the witness

1 testify.

2 Q. (BY MR. FREEMAN) Is the race of the  
3 parent -- race of the mother and the race of the  
4 father currently on a birth certificate?

5 A. On the legal portion of the birth  
6 certificate, no.

7 Q. But you do collect that information?

8 A. Correct.

9 Q. Are you aware of when that information was  
10 no longer on the birth certificate itself?

11 A. Starting in 1994.

12 Q. Okay. Is the HHSC birth record database  
13 searchable?

14 A. Only by individuals at the Vital Statistics  
15 Unit and in-house and local registrars who have  
16 access to our remote system.

17 Q. Okay. What type of queries can be  
18 conducted?

19 MR. SCOTT: Objection; form.

20 Q. (BY MR. FREEMAN) What type of queries may  
21 be conducted on the HHSC birth record database?

22 MR. SCOTT: And objection. This is  
23 your personal -- this is not as a 30(b)(6) witness.  
24 I don't think he's been offered -- I don't see an  
25 area that he's qualified under. But go ahead and

1 testify under your personal knowledge, if you have  
2 any.

3 A. The queries on that particular system,  
4 through the front end, would be basic information  
5 that's on the birth certificate. So if you have the  
6 name of the child, their date of birth, you can  
7 search through that. If you don't have a name of a  
8 child, but you have a parent's name, you can search  
9 under parents' name.

10 Q. (BY MR. FREEMAN) Okay. Anything else?

11 A. With -- we can search just under a birth --  
12 date of birth, but you're going to get a lot of hits  
13 on that.

14 Q. Fair enough. Are there any types of  
15 summary reports?

16 A. We -- define a summary report.

17 Q. So if I wanted to know how many births  
18 happened on November 3rd, 1987 --

19 A. Center for Health --

20 MR. SCOTT: One second. Let me go  
21 ahead and object. Same one. Mr. Freeman, I want to  
22 make sure. He's coming in -- obviously it's your  
23 right to ask him questions outside of the 30(b)(6)  
24 notice, and I don't want to be too intrusive from  
25 the standpoint of letting the deposition go forward.

1 But to the extent we're outside of the scope of his  
2 capacity as the 30(b)(6) representative, because I  
3 don't -- we've not prepared him to address the  
4 issues of what computer capabilities are available  
5 over at Health and Human Services in -- within the  
6 Department of State Health Services, so I want to  
7 make sure that -- whether we can have an agreement  
8 without me interrupting constantly. And I don't  
9 know what the easiest way to do that is, but I don't  
10 want to keep saying, objection; form outside the  
11 scope of Rule 30(b)(6).

12 MR. FREEMAN: Why don't we -- do you  
13 want to just -- rather than doing it question by  
14 question, say that you'll reserve that objection?

15 MR. SCOTT: That's great. That would  
16 be perfect. How about that.

17 MR. FREEMAN: Okay. That's fine. I  
18 mean, and I don't think that we're going to be  
19 worried that much about what's binding HHSC versus  
20 what's his testimony. I would think that this is  
21 relevant, although I -- to Topic 1, although I  
22 recognize that it's getting pretty far out there.  
23 So rather than having a fight, keep going, you  
24 reserve the objection.

25 MR. SCOTT: Thank you.

1 MR. FREEMAN: Sounds great.

2 Q. (BY MR. FREEMAN) That was the lawyer stuff  
3 we were talking about.

4 So we were talking about the summary  
5 reports and the capability of the database to produce  
6 a summary report. If you wanted to produce a summary  
7 report of every child who was born on November 3rd,  
8 1987, could you do that? Is that -- well, first, is  
9 it technically feasible?

10 A. The Department of State Health Services  
11 can, through the Center for Health Statistics.

12 Q. Is that a standard product of some kind?

13 A. They have a health statistics report --  
14 Vital Statistics report that they publish after they  
15 have dealt with all the statistical scrubbing, making  
16 sure all the data is correct to the best of their  
17 knowledge.

18 Q. Okay. Is there any type of summary report  
19 that could be conducted by race?

20 A. Yes.

21 Q. Are there any types of standard reports, to  
22 your knowledge, that are produced with regard to  
23 births by race, routinely produced?

24 A. To the best of my knowledge, the report,  
25 the Vital Statistics report does break down the

1 number -- the percentage of births by race and  
2 categorizes them. It can also do by race, by region.

3 Q. And what are the regions that you use?

4 A. They are the health regions throughout the  
5 state. There's -- I believe there's ten, and they're  
6 divided throughout the state, like Region 1, for  
7 example, is the Panhandle area.

8 Q. Do you know if those are the same regions  
9 the DPS uses, the Department of Public Safety?

10 A. No, I don't -- I'm not aware of that.

11 Q. Okay. So earlier you mentioned a delayed  
12 birth certificate or a delayed certificate of birth.  
13 What is a delayed certificate of birth?

14 A. It is a birth certificate that is filed a  
15 year or more after the child is born. They have to  
16 present basically the same type of information that  
17 they would if they were -- if they were -- had the  
18 child at home and was going to the local registrar.

19 Depending on the age of the child,  
20 depends on how many documents we will require. Like  
21 if the child is one to four -- one to four years of  
22 age, we will only need two documents, one of them  
23 being an attested statement from a healthcare  
24 provider. The -- and then -- I'm sorry, there's only  
25 one document needed from one to four.

1 Q. Okay. If we could stop there real quick  
2 and then we'll keep going.

3 A. Okay.

4 Q. So is there a distinction between a home  
5 birth and a delayed birth certificate between ages  
6 one and four where the healthcare provider is  
7 required at that point, as opposed to at the  
8 discretion of the local registrar?

9 A. We're -- the way our rules are written,  
10 we're going to need something showing that that child  
11 is alive.

12 Q. Okay.

13 A. Where they go afterwards and get a checkup,  
14 showing that that child is alive.

15 Q. Okay. Are there any other differences  
16 between a -- the documents required to establish a  
17 home birth and the documents required for the  
18 creation of delayed birth record when the child is  
19 between the age of one and four?

20 A. They could vary because we may not ask for  
21 as many documents to assist them in order to get that  
22 child. Because the way the law is written and the  
23 rules, we just need -- depending on when they're  
24 filing it, we need documents that show the child's  
25 name, date of birth, and one -- at least one that has



1 their parents' name on it.

2 Q. And what is the process for obtaining the  
3 delayed certificates of birth?

4 A. They first have to request that we search  
5 our information for a birth certificate, just to  
6 ensure that no delayed birth certificate has already  
7 been filed. If we do not find -- if we find one, we  
8 will send them a certified copy, because if we don't,  
9 we will send them information on how to file a  
10 delayed birth certificate.

11 They have to pay \$22 for the search  
12 fee. And then when they have submitted all their  
13 documents for the delayed record, they have to pay a  
14 \$25 fee to complete that record so we can file it.

15 Q. And how long does it take to obtain a  
16 delayed birth record?

17 A. It could vary. It could be a couple of  
18 weeks, could be up to a year.

19 Q. And what would cause it to take up to a  
20 year?

21 A. Depending on the documents they submit.  
22 Generally, older individuals, there's a little bit  
23 harder time for them to get the documents, and some  
24 of those documents need to be verified that they are  
25 on file at a specific -- the holder of those records,

1 for example, a Baptismal record. We will check the  
2 archdiocese to make sure that that is on file at that  
3 archdiocese.

4 Q. Okay. And what are the additional  
5 requirements if the -- we'll say individual ones were  
6 past one to four, if they're older than four?

7 A. From four to 15, they need two documents,  
8 one -- at least one showing parents' name on it. So  
9 both have to have name, date of birth, place of  
10 birth. One has to have the parents' names on it.

11 Q. Okay. And beyond 15?

12 A. Three documents, same requirement, name,  
13 date of birth, place of birth. One has to have the  
14 parents' names on it.

15 Q. And anything -- is it 15 to the end?

16 A. 15 to -- yeah, yeah.

17 Q. Okay. And so you said there's a \$22 search  
18 fee and a \$25 processing fee. Are there any other  
19 fees involved?

20 A. If they want a certified copy once we've  
21 completed the new birth certificate, the delayed  
22 record, they can purchase one for \$22.

23 Q. And that's the normal fee?

24 A. Uh-huh.

25 MR. SCOTT: Yes?

1 A. Yes.

2 Q. (BY MR. FREEMAN) About how often does your  
3 office issue delayed certificates of birth -- or  
4 create -- sorry. How often do they create a delayed  
5 birth record?

6 A. To my offhand knowledge, we get in  
7 approximately 60 requests a month.

8 Q. Okay. Are you aware of any racial  
9 distinctions within the group of people requesting  
10 delayed birth records, the creation of delayed birth  
11 records?

12 A. We don't -- no, I'm not aware of any racial  
13 distinctions.

14 Q. So it's not, for example, more often Latino  
15 families from the Valley rather than Anglo families  
16 or elsewhere?

17 A. We would have to do a study on that to find  
18 out.

19 Q. All right. Is there any process to correct  
20 a birth record that contains errors?

21 A. Yes.

22 Q. What is that process?

23 A. They can request that an amendment be  
24 filed. There's an amendment form, it's called the  
25 VS 170. The parents complete that.

1 If a child is under 17 years of age,  
2 they would need a parent to sign that document, a  
3 parent -- if -- parent or parents, if both parents  
4 are on the record, both parents have to sign it. If  
5 only one parent is on the record, one parent has to  
6 sign that in front of a notary.

7 Depending on the correction, we may  
8 need a supporting document such as a school record,  
9 Baptismal record.

10 Q. You know, I realized I needed to ask one  
11 more question about the creation of the delayed birth  
12 record. Where does a person have to go to create  
13 those records?

14 A. It can be only done by the Department of  
15 State Health Services.

16 Q. Do they have to travel to Austin in order  
17 to do it or can they submit documents by mail?

18 A. They can submit it by mail.

19 Q. And do local registrars provide that  
20 information to individuals? Are they trained to do  
21 that?

22 A. Yes.

23 Q. Okay. Back to the amendments. You said  
24 that the request for an amendment needs to be  
25 notarized. Correct?

1 A. Correct.

2 Q. Do any HHSC employees have the authority to  
3 sign and authenticate these requests for amendments  
4 without a notary? Or it specifically has to be a  
5 notary?

6 A. We have Department of State Health Services  
7 staff who are notaries.

8 Q. And do those notaries require any form of  
9 identification to establish that the person is who  
10 they say they are before they will notarize the  
11 statement?

12 A. I'm not a notary, so I wouldn't know what  
13 their requirements are.

14 Q. Okay. How long does it take in order to  
15 get a birth certificate amended?

16 A. We have -- we're required to respond to the  
17 individuals within 30 business days of receipt of the  
18 amendment. If the amendment application -- if the  
19 amendment can be processed within the 30 business  
20 days, we'll send them notification that it has been  
21 processed.

22 If they included a fee for a certified  
23 copy, we will send them a certified copy also.

24 If the amendment can't be processed,  
25 we need additional information, we'll send them a

1 letter asking for what -- that information.

2 Q. And how much does it cost to get an  
3 amendment?

4 A. It's a \$15 processing fee.

5 Q. About how often do you get requests for  
6 amendments?

7 A. We get them daily, and I couldn't tell you  
8 the amount of amendments we get in. We get quite a  
9 few.

10 Q. Okay. And what are generally the bases for  
11 asking for amendments?

12 A. They have discovered that there's an error  
13 on their birth certificate, that when it was filed,  
14 either a spelling error or they have been going by a  
15 different name, because they have been told by their  
16 parents that their name is different.

17 Q. Got it. And do you have any awareness of  
18 the racial distributions of the individuals who  
19 request birth certificate amendment?

20 A. No.

21 Q. Okay. Is there any other way, besides what  
22 we've discussed, in which a birth record is created?

23 A. No.

24 Q. Okay. Been going about an hour. Do you  
25 want to take a break for about five minutes?

1 A. Sure.

2 (Recess.)

3 Q. (BY MR. FREEMAN) Back on the record.

4 I just want to go back and clarify one  
5 thing. When I was saying distinctions by race, I  
6 also included language minorities. Going forward,  
7 I'll be using the term "race" to include Hispanics as  
8 a distinct race from Anglos. Does that make sense?

9 A. Yes.

10 Q. And with that definition in mind, do any of  
11 your past questions about tracking particular types  
12 of birth certificate amendments or issuance of late  
13 birth certificates, do those answers change at all?

14 A. No, my answers don't change.

15 Q. Okay. Just making sure.

16 So ordinarily, how much does it cost  
17 to obtain a certified copy of a birth record from the  
18 Department of State Health Services?

19 A. \$22.

20 Q. Are there any additional costs, depending  
21 on whether a request is -- strike that so it's not  
22 compound.

23 Are there any additional costs for a  
24 request made in person?

25 A. No.

1 Q. Are there any additional costs for requests  
2 made by mail?

3 A. No.

4 Q. Are there any additional costs for requests  
5 made online?

6 A. There is a processing fee for a credit  
7 card.

8 Q. And how much is that fee?

9 A. I'm not aware of what that fee is, offhand.

10 Q. A couple dollars, no more?

11 A. \$3 at the most.

12 Q. Okay. Is there any option to expedite the  
13 purchase of a birth record?

14 A. Yes.

15 Q. And is there an additional fee to expedite?

16 A. Yes.

17 Q. How much is that fee?

18 A. \$5.

19 Q. And are there any additional fees if the  
20 birth record was requested from a remote office?

21 A. The local registrar's office, in accordance  
22 to the Health and Safety Code 191.0045, can charge an  
23 additional dollar on top of the fees, for records  
24 preservation, training, and security.

25 Q. Okay. So there's just one additional



1 dollar on top of the normal fee, if you obtain it at  
2 a local office?

3 A. Correct.

4 Q. If you could return to the proposed rule,  
5 which I believe is Exhibit 107. And am I correct,  
6 this is a proposed amendment to a regulation that  
7 addresses fees charged under Section 181.22 of  
8 Title 22 of the Texas Administrative Code?

9 A. Yes.

10 Q. And these are some but not all of the fees  
11 that make up that \$22. Am I correct?

12 A. These are all the fees that make up that  
13 \$22.

14 Q. Okay.

15 A. Did they put them all in? Oh, no. Okay.  
16 So, yeah, they didn't include the whole rule, so this  
17 is just that section of that rule.

18 Q. Okay. Does Section 181.22 of Title 22 of  
19 the Texas Administrative Code set out all the fees  
20 that make up the \$22 to obtain a birth certificate?

21 A. Yes.

22 Q. Okay. And we had already said this rule  
23 was submitted to the Secretary of State as a proposal  
24 on August 12th, 2013?

25 A. Yes.

1 Q. Do you know if litigation about SB 14 was  
2 already underway when this rule was submitted?

3 A. I don't know.

4 Q. Okay. If we could go back to Exhibit 108,  
5 which is the adopted rule. Do you know when this  
6 regulation went into effect?

7 A. October 21st, 2013.

8 Q. Are there any components that that \$22 cost  
9 of this regulation does not address?

10 A. Only those charged by the local.

11 Q. What about the \$2 search fee under the  
12 Texas Health and Safety Code?

13 A. That -- in the Texas Administrative Code,  
14 the surcharge for \$2 is indicated in that under  
15 181.22(c).

16 Q. And so it's your testimony that this  
17 administrative rule waives, for certain individuals,  
18 the \$2 search fee under the Texas Health and Safety  
19 Code?

20 A. Through the Department of Health and Human  
21 Services, yes.

22 Q. What is your basis for believing that to be  
23 true?

24 A. Because we have it in the fee schedule in  
25 our fees charged by Vital Statistics, so we have

1 waived that \$2 fee.

2 Q. If you look at Subsection T, which I  
3 believe is the new provision, doesn't it say that the  
4 fee is waived, except as provided in Subsection C?

5 A. You are correct. But we waive that fee.

6 Q. You do waive that fee?

7 A. Yes.

8 Q. The \$2 fee?

9 A. Uh-huh.

10 Q. And even though it's required by statute?

11 A. We still pay it to the Comptroller, but we  
12 waive that fee.

13 Q. Okay. You waive that fee to the individual  
14 who is obtaining the birth record?

15 A. Uh-huh.

16 MR. BRAY: Is that a yes?

17 A. Yes.

18 Q. (BY MR. FREEMAN) Has any notice been  
19 provided that the \$2 fee is not being charged,  
20 notwithstanding the text of this proposed -- or,  
21 excuse me, of this adopted rule?

22 A. Not that I'm aware of. We -- if an  
23 individual comes into our office and requests an EIC  
24 certificate, we're going to -- we're not going to  
25 charge them.

1 Q. And when did that particular practice go  
2 into effect?

3 A. We put that into place at the beginning.

4 Q. Does this regulation address the \$1 county  
5 fee?

6 A. No.

7 Q. Okay. If you go back to the final  
8 responses of the Executive Commissioner regarding  
9 comments, and back to the final responses regarding  
10 cost, which is on the second page, do you see the  
11 last paragraph in the first column where it says --

12 A. First column.

13 Q. The last paragraph that starts, "Regarding  
14 fees"?

15 A. Yes.

16 Q. Do you see -- does it state, "The fees  
17 required to be paid pursuant to Health and Safety  
18 Code Section 191.0045(e) and 191.022(f), \$2, are  
19 statutorily required and are not waived by this  
20 rule"?

21 A. Uh-huh. Yes.

22 Q. And so the notice provided in the Texas  
23 registrar -- or register states that the \$2 fee is  
24 still not waived and must be paid. Correct?

25 A. Correct.

1 Q. Okay. And that's the only statutory fee  
2 for a -- for obtaining a birth certificate. Correct?

3 A. Correct.

4 Q. The other fees are all set by regulation by  
5 HHSC?

6 A. Of the \$22, yes.

7 Q. Yes. Okay. So the Texas Legislature  
8 didn't take any action to eliminate birth certificate  
9 fees for individuals who require a birth certificate  
10 in order to obtain an EIC. Correct?

11 A. No.

12 Q. No, I'm not correct or no, they --

13 A. Oh, yes. Yes.

14 Q. -- did not take any --

15 A. They -- no, they did not take any action.

16 Q. Okay. And so this regulation is the most  
17 that could be done at the discretion of HHSC,  
18 correct, to eliminate fees?

19 A. Yes.

20 Q. Okay. Could this be reversed at the  
21 discretion of HHSC at some later date?

22 MR. SCOTT: Objection; form. Go  
23 ahead.

24 Q. (BY MR. FREEMAN) Could this regulation  
25 waiving certain fees for an individual who requests

1 an EIC birth certificate, be changed back at some  
2 later date at HHSC discretion?

3 A. The HHSC has rulemaking authority, so they  
4 could change the rule.

5 Q. Okay. Okay. In other circumstances, are  
6 there full statutory waivers of fees for obtaining a  
7 birth record?

8 A. Through -- there are. But offhand, I  
9 don't -- I'm not sure what those are.

10 Q. Are active duty military -- members of the  
11 military permitted to obtain birth records before  
12 deployment abroad?

13 A. Yes, I am aware of that one, yes.

14 Q. And are any veterans or families of  
15 veterans permitted to obtain birth certificates  
16 without a fee when they -- in order to substantiate  
17 claims?

18 A. Yes.

19 Q. Okay. But there's no full statutory waiver  
20 of fees for individuals who require a birth  
21 certificate to obtain an EIC. Correct?

22 A. I'm sorry, could you repeat that?

23 Q. Absolutely. Am I correct that there is no  
24 full statutory waiver of fees for individuals who  
25 require a birth certificate to obtain an EIC?

1 Correct?

2 A. Correct.

3 Q. If we go back to the proposed regulation --  
4 I'm sorry to dance back and forth. That's 107. If  
5 you look on the second page, under public benefit, am  
6 I correct that this states, "The public will benefit  
7 from the adoption of this amendment because it allows  
8 a person who does not have a birth certificate to  
9 obtain one at little or no cost for the purpose of  
10 securing an EIC to vote"?

11 A. Uh-huh, yes.

12 Q. Would it be more accurate to say that under  
13 the terms of this regulation, it would allow an  
14 individual to obtain a birth certificate at little  
15 cost?

16 MR. SCOTT: Objection; form.

17 Q. (BY MR. FREEMAN) You may answer.

18 MR. SCOTT: Actually, I'm going to  
19 instruct the witness not to answer. The document  
20 speaks for itself. The comments speak for  
21 themselves. And this is not a witness we posed to  
22 comment on interpretation of the rules.

23 MR. FREEMAN: That's not a proper  
24 instruction. As long as you're not trying to  
25 protect a privilege, it's not proper to instruct the

1 witness not to answer.

2 MR. SCOTT: You've been so  
3 instructed. The document speaks for itself.

4 Q. (BY MR. FREEMAN) Can we agree that an  
5 individual who seeks an EIC birth certificate must  
6 take time to travel to a location where they can  
7 apply for the EIC birth certificate?

8 A. Yes.

9 Q. Can we agree that because of the hours that  
10 these locations are open, some individuals will have  
11 to take time off of work to obtain an EIC birth  
12 certificate?

13 A. Yes.

14 Q. Can we agree that many individuals will  
15 have to spend money on transportation to get to these  
16 locations because the individuals who need an EIC  
17 birth certificate are not individuals who have  
18 driver's licenses?

19 A. Yes.

20 Q. And if I refer to the birth certificate  
21 obtained at a reduced fee under this regulation as an  
22 EIC birth certificate, will you understand my use of  
23 that term?

24 A. Yes.

25 Q. Okay. Is the birth certificate provided to



1 an individual who requests the partial fee waiver  
2 under the regulation we've discussed, is that birth  
3 certificate different from an ordinary certified copy  
4 of a birth certificate?

5 A. Yes.

6 Q. How does it differ?

7 A. We designate on that document that it can  
8 be used for the electronic identification card only.

9 Q. Election identification card?

10 A. Uh-huh, yes.

11 Q. Okay. What other purposes do individuals  
12 need birth certificates for?

13 A. There are many different reasons. For  
14 showing proof of birth, insurance, school. There's  
15 numerous reasons.

16 Q. Okay. What is the purpose of limiting the  
17 circumstances in which an EIC birth certificate can  
18 be used?

19 A. We are -- we wanted to be in line with --  
20 A, we wanted to be in line with the Department of  
21 Public Safety in that their -- their election card  
22 can only be used for election. So we wanted to put  
23 our death/birth certificate the same.

24 B, we believe that the -- we're --  
25 that once the public found out that they could get a

1 free birth certificate for election purposes, they  
2 would just get a free birth certificate and use it  
3 for all other purposes, without needing to get an  
4 election card.

5 We're already losing -- we already pay  
6 to a Texas.gov through our fees for a contract, \$10  
7 off of that. Plus the Department of State Health  
8 Services also waives that \$2 fee, which we pay to the  
9 Comptroller. So we believe we would lose quite a bit  
10 of revenue, plus having to pay out of our budget to  
11 subsidize those records that are being given for  
12 free.

13 Q. And when you mentioned \$10 being paid out  
14 to Texas.gov, is it possible to obtain an EIC birth  
15 certificate online?

16 A. No.

17 Q. Okay.

18 A. We are contracted -- regardless of whether  
19 we issue it online or through our office, we are  
20 required to pay \$10 for each record issued, per  
21 contract, to Texas.gov.

22 Q. And would you agree that the time and costs  
23 that an individual have to take that we just  
24 discussed to obtain the EIC birth certificate,  
25 limiting the use of the birth certificate to only

1 being able to use it to get an EIC, that means that  
2 all those burdens are only going to be related to  
3 voting and that -- would you agree with that?

4 A. I agree.

5 Q. Okay. What law authorizes the creation of  
6 a limited use birth certificate?

7 A. The State Registrar has authority for  
8 issuing birth certificates, so it's up to her  
9 discretion.

10 Q. Okay. When was the EIC birth certificate  
11 developed?

12 A. We began developing it once the proposed  
13 rules were put in to the registrar -- the registry.  
14 And I believe it was by -- we had it in place by  
15 October 30th.

16 Q. And how does the EIC birth certificate  
17 physically differ from the ordinary certified copy of  
18 a birth record?

19 A. It just has that designation statement  
20 saying it's for election purposes only.

21 Q. And how many EIC birth certificates can an  
22 individual obtain over their lifetime?

23 A. I believe it's one.

24 Q. What happens if they lose that EIC birth  
25 certificate?

1 A. They would have to purchase one.

2 Q. So after the first time, they're going to  
3 have to pay full rate?

4 A. Uh-huh.

5 Q. How is that tracked?

6 A. If they have lost one?

7 Q. Yes. How is it tracked to determine that  
8 an individual has gotten their one lifetime EIC birth  
9 certificate?

10 A. We track that in our information database.

11 Q. Was there any time when an EIC birth  
12 certificate was issued in a different form from the  
13 present?

14 A. Not that I'm aware of.

15 MR. FREEMAN: If we could mark this  
16 as Exhibit 109.

17 (Exhibit Number 109 marked.)

18 Q. (BY MR. FREEMAN) What is this document?

19 A. Appears to be a screen shot of our remote  
20 system.

21 Q. Have you seen any printout like this  
22 before?

23 A. This is the first time I've seen this  
24 document.

25 Q. And was October 21st, was that -- we said

1 that was when the rule went into effect about the EIC  
2 birth certificates. And does -- if you look at the  
3 bottom, does this appear to be notarized?

4 A. I don't know what that signature is, or  
5 seal.

6 Q. Okay. I honestly have not -- I honestly  
7 don't know what this document is, and I was just  
8 hoping you could clear it up. So --

9 A. It -- from the best of my knowledge, if  
10 it -- I don't know where this was issued from, but it  
11 appears that one of our local registrars took a  
12 screen shot of our remote, and issued that as -- for  
13 election identification purposes without our  
14 knowledge.

15 Q. Okay. And why would you not want to -- why  
16 would this not be sufficient to establish someone's  
17 birth record?

18 A. Because it's not a document that has been  
19 approved by the State Registrar for issuing for that  
20 document.

21 Q. At a practical level, does this establish  
22 the fact of someone's birth?

23 A. Not according to State law, no.

24 Q. But does it set out all the same facts as a  
25 birth certificate would?

1           A.    I can't see exactly what's on this screen,  
2   so I wouldn't be able to tell you for sure.   However,  
3   to the best of my ability to read this document, it  
4   appears to be the information that's issued from the  
5   abstract birth record.

6           Q.    Okay.   And the abstract birth record, does  
7   that contain all the same information as a birth  
8   certificate?

9           A.    The Department of State Health Services has  
10   two forms of certified copy of birth certificate; an  
11   abstracted birth, which is limited information: name,  
12   date of birth, parents' names, and county of birth,  
13   and the file date and the issuance date.

14                   The full-sized copy has the additional  
15   information, which is on the legal portion of the  
16   birth certificate, such as the parents' -- the  
17   mother's address, the hospital name, time of birth of  
18   the child.

19          Q.    And does an EIC birth certificate have all  
20   that long-form information?

21          A.    Depending on where they get it.

22          Q.    Where would the distinction lie?

23          A.    If they issue it off of our remote -- so if  
24   we issue it, and we're going to issue this, where  
25   it's just going to be the abstract, if -- when I say

1 we, I mean the Department of State Health Services.

2 Q. And that's the Austin office?

3 A. Yes.

4 Q. Okay.

5 A. If a local registrar who is on our remote  
6 issuance system, they have access to our database,  
7 they will issue the abstract. If they are not on our  
8 remote database, they're going to access that  
9 record -- their own records to issue that.

10 Q. Okay. And someone who is not on the  
11 remote, that's the local county that had that  
12 original copy?

13 A. Uh-huh.

14 Q. Okay.

15 A. Yes.

16 Q. Okay. And this would -- the document  
17 that's Exhibit 109 would no longer -- if it ever were  
18 acceptable, it is certainly not acceptable now, is  
19 that correct, for use?

20 A. No, it's not acceptable.

21 MR. FREEMAN: Okay. If we could mark  
22 this as Exhibit 110.

23 (Exhibit Number 110 marked.)

24 Q. (BY MR. FREEMAN) What is Exhibit 110?

25 A. It is a sample of what the election -- EIC

1 birth certificate would look like once it's been  
2 issued.

3 Q. And what are the -- what are the specific  
4 features of an EIC birth certificate?

5 A. The only difference between a regular birth  
6 certificate and an EIC birth certificate is this  
7 statement that says, For election purposes only.  
8 Cannot be used for -- as identification.

9 Q. And is this printed on a special security  
10 paper?

11 A. Yes. All certified copies of birth  
12 certificates are issued on security paper that has  
13 specific security features as it's laid out in the  
14 Texas Administrative Code.

15 Q. And how much does security paper cost?

16 A. Offhand, I don't know.

17 Q. Do you have any knowledge of how many of  
18 those unacceptable forms of EIC birth certificates  
19 were ever issued?

20 A. No, I don't. I don't have any knowledge of  
21 that.

22 Q. Give me just one moment. I'm cutting out  
23 the questions that your counsel and I have agreed  
24 that I'm not going to ask.

25 Does HHSC connect to anyone other than



1 the local issuance offices, to provide data regarding  
2 births?

3 A. Through the remote system?

4 Q. Yes.

5 A. Yes. We provide access to the Social  
6 Security Administration for them to verify births.

7 HHSC, through Medicaid, they have a  
8 portal through their Medicaid program where they  
9 enroll people that hits off of that same database.  
10 It's not the same interface, but it hits off of that  
11 database.

12 Q. Okay. Is an individual related to an EIC  
13 birth certificate applicant allowed to request that  
14 EIC birth certificate on their behalf?

15 A. I believe, from my knowledge, the  
16 individual will have to request that document.

17 Q. So, for example, a parent could not request  
18 an EIC birth certificate for their child?

19 A. I think I'm going to step back and say, I  
20 believe it -- actually, I was incorrect on that last  
21 statement. I actually -- thinking about it, I think  
22 it was -- we -- I'm not sure what that -- what the  
23 answer is on that.

24 Q. Okay. We're going to come back to that  
25 after a break, and I'll see if I can find something

1 to refresh your memory on that one.

2 A. Okay.

3 Q. Do you know if there's any limitation based  
4 on age for individuals who apply for an EIC birth  
5 certificate?

6 A. We instruct that it should only -- 16 years  
7 of age or older for that.

8 Q. And why is there no regulatory change  
9 necessary for that?

10 A. The Department of State Health Services,  
11 under Texas administration -- Texas Health and Safety  
12 Code states that the State Registrar can propose  
13 rules, propose legislation, and create policy and  
14 procedure. And this falls under policy and  
15 procedure.

16 Q. Okay. So as we already discussed, an  
17 individual can't apply -- well, sorry, let me take  
18 that back.

19 As we already discussed, an individual  
20 can apply for a certified copy of a birth certificate  
21 online, correct, an ordinary certified copy?

22 A. Yes.

23 Q. Is there any -- and you said the extra  
24 cost -- sorry -- was the credit card processing?

25 A. Yes.

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5/9/2014

75

1 Q. How long does it take to get a birth  
2 certificate that an individual applies for online?

3 A. We process it within ten to 15 business  
4 days.

5 Q. Can it be expedited?

6 A. Yes.

7 Q. How fast?

8 A. It's -- well, let me step back. It's  
9 already in expedited service.

10 Q. Okay.

11 A. To have it returned back to them overnight,  
12 after we're done processing it, they can pay an  
13 additional shipping fee.

14 Q. And how much is that, to your knowledge?

15 A. \$8.

16 Q. Okay. So no matter what, there's no way to  
17 get a birth certificate that you're applying for  
18 online in less than six days. Right?

19 A. Yes.

20 Q. Okay. And it requires a photo ID to get an  
21 ordinary, certified birth certificate online.  
22 Correct?

23 A. Yes.

24 Q. What kinds of photo ID?

25 A. Driver's license.

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5/9/2014

76

1 Q. Any other kinds?

2 A. And identification card.

3 Q. Does it have --

4 A. Issued from either this state or another  
5 state.

6 Q. Okay. Anything else?

7 A. No.

8 Q. And do those have to be currently valid?

9 A. Yes.

10 Q. Can an individual obtain a certified copy  
11 of a birth certificate by mail?

12 A. Yes.

13 Q. Same \$22 cost?

14 A. Yes.

15 Q. And how long does that take?

16 A. That will take generally six to eight  
17 weeks.

18 Q. Can that be expedited?

19 A. Yes.

20 Q. How much does that cost?

21 A. It's \$5 expedite --

22 Q. The \$5 fee? And how fast would that be?

23 A. Again, that's ten to 15 business days on  
24 that one, too.

25 Q. Okay. So online is automatically

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5/9/2014

77

1 expedited?

2 A. Yes.

3 Q. I got it. And can you pay additional to  
4 have that then overnighted back?

5 A. Yes.

6 Q. And that's \$8?

7 A. Yes.

8 Q. But no matter what, if you're applying by  
9 mail, it's going to take more than six days.

10 Correct?

11 A. Correct.

12 Q. And you can't get an EIC birth certificate  
13 by mail. Correct?

14 A. No, you cannot.

15 Q. And this requires a photo ID to apply for a  
16 birth certificate by mail?

17 A. Yes.

18 Q. Same as online?

19 A. We will accept -- for mail-ins, we will  
20 accept passport, other government-issued  
21 identification, such as a concealed handgun permit.

22 Q. Is it any government-issued photographic  
23 identification?

24 A. Yes.

25 Q. And is it any -- is it any federal?

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5/9/2014

78

1 A. Yes. We'll accept federal, too.

2 Q. And any state issued?

3 A. Yes.

4 Q. And does that include identification issued  
5 by, for example, a State university?

6 A. That -- that -- you mean like a school  
7 identification?

8 Q. Like a UT ID.

9 A. We will accept that as a secondary.

10 Q. But not as a primary form of  
11 identification?

12 A. Not as a primary, no.

13 Q. So what is the limitation on state-issued  
14 IDs?

15 A. Has to be issued from a -- like their  
16 Department of Motor Vehicles, or federal government.  
17 We differentiate between the schools and -- because  
18 some schools aren't state-run schools.

19 Q. Okay. So for the photo IDs by mail -- let  
20 me make sure I understand this -- any federal photo  
21 ID is fine. Correct?

22 A. (Nods head.)

23 Q. And any state ID that is issued by the  
24 Department of Public Safety or a DMV or an equivalent  
25 state agency. Is that correct?

VICTOR FARINELLI

5/9/2014

79

1 A. Uh-huh.

2 Q. And that will include --

3 A. Yes.

4 Q. And that will include concealed handgun  
5 licenses in Texas. Correct?

6 A. Yes.

7 Q. Are there any -- oh, sorry.

8 How about local IDs? So like if I  
9 work for the City of Austin, and they give me an  
10 employee ID, would that be sufficient?

11 A. That would be sufficient.

12 Q. It would?

13 A. Yes.

14 Q. Okay. Do employee IDs issued by the State,  
15 are those sufficient?

16 A. Yes.

17 Q. Okay. So that's something else beyond  
18 DMVs. Right?

19 A. Right.

20 Q. Okay. How about if a library card has a  
21 picture on it, is that going to be enough?

22 A. That one, I believe, is not in our rules  
23 for that specific one.

24 Q. Okay. And how about like a monthly bus  
25 pass with a picture on it?

1 A. That's not in our rules.

2 Q. Okay. Are there any other photo IDs that  
3 you're aware of that are sufficient to obtain a birth  
4 certificate by mail?

5 A. Not that I'm aware of.

6 Q. Okay. Do those IDs that you have to submit  
7 by mail, do those have to be currently valid?

8 A. As a primary, yes.

9 Q. So is there a set of secondary IDs that you  
10 can use to obtain a birth certificate by mail?

11 A. Yes.

12 Q. What are those?

13 A. Any document that has -- that's issued from  
14 an agency that has a signature on it or an expired  
15 driver's license, 90 days expired.

16 Q. Okay. And if you submit a secondary form  
17 of identification, do you have to provide supporting  
18 identification as well?

19 A. You have to submit two secondary.

20 Q. Okay.

21 A. So like an expired driver's license and a  
22 Social Security card.

23 Q. Okay. There's no third tier of documents?

24 A. We have supporting documents.

25 Q. Okay.



1           A.    So if you have a secondary document,  
2   secondary ID -- expired driver's license -- you could  
3   submit two supporting documents.   That's up to the  
4   discretion of the State Registrar or the local  
5   registrar.

6           Q.    Okay.   And what are the -- to your  
7   knowledge, what are the supporting documents?

8           A.    Could be a letter from Medicaid, high  
9   school ID.

10          Q.    I don't mean to quiz you.   Do you know if  
11   those supporting documents are all listed in a  
12   regulation?

13          A.    They're in the Texas Administrative Code.  
14   The primary and secondary are in the Texas  
15   Administrative Code.   Supporting documents, it states  
16   that's up to the discretion of the State and local  
17   registrar.

18          Q.    We don't need to make this an exhibit, but  
19   if you could just take a look at this document and  
20   see if this refreshes your recollection as to which  
21   regulation contains the list of supporting -- or of  
22   primary, secondary, and supporting documents  
23   required.

24          A.    G.   Texas Administrative Code  
25   Title 25 181.28(g), it begins.

1 Q. And so 181 --

2 A. Wait. I'm sorry, it's H.

3 Q. But 181.28 contains the list of the  
4 relevant documents. Is that correct?

5 A. Yes.

6 Q. All right. Then we don't need to go  
7 through that with you.

8 Can an individual obtain a certified  
9 copy of a birth certificate at the Department of  
10 State Health Services office in Austin?

11 A. Yes.

12 Q. Where is that office located?

13 A. 1100 West 49th Street.

14 Q. And is that near mass transit?

15 A. Yes. There's a -- to my knowledge, there  
16 are two buses that stop there.

17 Q. But that's west of I-35. Right?

18 A. Yes.

19 Q. What type of area is that, in terms of  
20 residential, commercial?

21 A. I wouldn't be able to answer that.

22 Q. Okay. Do you know -- is it near the  
23 university?

24 MR. SCOTT: Objection; form.

25 A. Define near the university.

1 Q. (BY MR. FREEMAN) Is it within a mile of  
2 UT?

3 A. I'm not sure of the length. To the best of  
4 my knowledge, approximately that.

5 Q. Okay. Do you know if that's a  
6 predominantly Anglo part of the city?

7 A. I wouldn't know.

8 Q. Okay. Is it located near any DPS offices?

9 A. We're approximately half a mile from the  
10 DPS.

11 Q. Okay. What are the hours that the office  
12 is open?

13 A. 8:00 to 5:00, Monday through Friday.

14 Q. No evenings?

15 A. No.

16 Q. No weekends?

17 A. No.

18 Q. Okay. How long is the wait, generally, to  
19 be served there?

20 A. Depending on the day, could be five, ten  
21 minutes to anywhere to 20, 30 minutes.

22 Q. And do you get your birth certificate right  
23 away or do you have to come back?

24 A. You can get it right away.

25 MR. FREEMAN: Can we go off the

1 record for a second.

2 (Discussion off the record.)

3 Q. (BY MR. FREEMAN) Does an individual who  
4 comes to the Austin office get their birth  
5 certificate while they're there or do they have to  
6 come back again to get it?

7 A. The majority of them will get it while  
8 they're there, depending -- if we have to do a  
9 search, say the information that they put on their  
10 application doesn't pull up anything in our database,  
11 we'll go and do a manual search of the record. That  
12 could take a little bit longer.

13 Q. And are there any other circumstances  
14 besides the information provided on the application  
15 not getting a hit in your database in which a search  
16 would be required?

17 A. Can you ask that again?

18 Q. Are there any other circumstances, besides  
19 the circumstances you just described, where the  
20 information provided does not get a hit in the  
21 database --

22 A. If they don't have a birth certificate.

23 Q. Okay. And how long does the search take?

24 A. Depending on how many searches we have to  
25 do, the search itself takes roughly about 20, 30

1 minutes. But if we have quite a few searches that we  
2 have to do, it piles that on top of that.

3 Q. And why would a manual search turn up  
4 records that aren't in the database?

5 A. There may be an error on the birth  
6 certificate. There would be a discrepancy between  
7 what the applicant believes their name is spelled to  
8 be versus what's on the birth certificate, what they  
9 believe their birth date is versus what's on the  
10 birth certificate.

11 Q. So the person searching just checks a few  
12 variations, plus or minus a few days?

13 A. Yeah. We check multiple variations, yeah.

14 Q. And an individual who applies for a birth  
15 certificate in person in Austin, can they show the  
16 same combination of documents that a person applying  
17 by mail can show to get the birth certificate?

18 A. Yes.

19 Q. And if a person is applying for a birth  
20 certificate on behalf of their child, they only need  
21 to establish their own identity and not the identity  
22 of the child. Correct?

23 A. Correct.

24 Q. Who -- what is the relationship that an  
25 individual can have to the individual whose birth

1 record is sought in order to obtain that birth  
2 record?

3 A. According to the Texas Administrative Code,  
4 an immediate family member is defined, to the best of  
5 my knowledge, as parent, sibling, so brother/sister,  
6 and grandparent.

7 Q. And how do you establish that relationship,  
8 other than a parent?

9 A. They are attesting to the fact on the  
10 application. However, if there is any question  
11 whether or not that individual is -- let's say, for  
12 example, they're the individual's sister. We will  
13 ask for a birth certificate showing that the same --  
14 that shows they're the same parentage issues.

15 Q. What -- and so -- sorry. What type of  
16 documents would you use to establish common  
17 parentage?

18 A. Like a birth certificate.

19 Q. Okay.

20 A. Certified copy of a birth certificate. We  
21 have many individuals who are born outside of the  
22 state. If they were born here in Texas, we will just  
23 check our database. If they are born outside of  
24 Texas, we need a certified copy of their birth  
25 record.

1 Q. And how about for grandparents?

2 A. They attest to the fact on there, so we  
3 will take it on face value. But if there is any  
4 question about the parentage of that individual, we  
5 will -- we will check -- either check in our database  
6 if the parents were born here, see what their  
7 parentage is; and if they were born out of state, we  
8 will ask for a document that shows the -- like their  
9 child's birth certificate, who is the parent.

10 Q. Okay. And can a child apply for a birth  
11 certificate on behalf of their parent?

12 A. Yes.

13 Q. Okay. Is an EIC birth certificate  
14 available at the Austin office?

15 A. Yes.

16 Q. How are customers made aware that the EIC  
17 birth certificate is available?

18 A. We have an application available, but we  
19 don't have any signage.

20 Q. So there's no signage in the office.  
21 Correct?

22 A. Correct.

23 Q. And if a person gets to the front of the  
24 line and says they need a birth certificate, does the  
25 person working there ask them if they needed to get

1 an EIC?

2 A. We ask them what purpose they are needing  
3 it for.

4 Q. And if they say, I need it to get an EIC?

5 A. We provide them with that application.

6 Q. And that's part of the standard procedure  
7 for interfacing with an individual applying for a  
8 birth certificate?

9 A. Yes.

10 Q. Okay. Where are the EIC birth certificate  
11 applications kept?

12 A. We have them in-house and we also have them  
13 online.

14 Q. Okay. And does an individual have to go  
15 get the application from a set of potential forms to  
16 fill out, or does the person working there provide  
17 them with the form?

18 A. Every person who walks in goes to an  
19 information desk first and we ask them what their  
20 purpose is here.

21 Q. Okay.

22 A. Whether it's just getting a certified copy  
23 or correcting a record or -- and then at that point,  
24 they will -- the processor will determine which  
25 application they need at that point.



1 Q. And if they just go in and say, I need a  
2 birth certificate, the processor will still ask, what  
3 do you need your birth certificate for?

4 A. Yes.

5 Q. Okay. When was that changed? Or has that  
6 always been -- not always. Sorry.

7 When did that procedure begin?

8 A. We've had that process where we ask them  
9 what the purpose is, for -- since as long as I've  
10 been there.

11 Q. And before the EIC birth certificate was  
12 available, what was the reason for that process?

13 A. Depending on what they needed the birth  
14 certificate for would depend on what type of document  
15 we would -- if we -- before we had our records  
16 imaged, we would issue abstracts, mostly for speed,  
17 to get them out, because we used to have to -- for  
18 full-size copies, actually go out, make a photocopy  
19 of the record from the stacks, so that would take  
20 time.

21 So in order to speed it up, we would  
22 give them the abstract, and that was generally good  
23 for purposes like getting a driver's license, school.

24 If they needed a passport, we would  
25 provide them with the original -- the long form, so

1 that took a little bit longer. So that's why we  
2 wanted to find out which they needed it for.  
3 Sometimes they need a long form for Indian enrollment  
4 cards.

5 Q. Okay. Are there any other specific  
6 procedures related to applications for an EIC birth  
7 certificate?

8 A. No.

9 Q. If you turn back to what I believe is  
10 Exhibit 108, the notice of rule adoption.

11 A. Uh-huh.

12 Q. Look on the second page, up at the top  
13 where it says, response. Does it say, "To ensure the  
14 rule becomes effective in time for the November 2013  
15 elections, the department is ensuring the rule will  
16 be effective on October 21st, 2013"?

17 A. Yes.

18 Q. What actions were taken between  
19 October 1st, when this document was submitted, and  
20 October 21st, to ensure that the rule would be  
21 effective?

22 A. I'm not sure exactly what the question  
23 means.

24 Q. Let me rephrase, then. What actions were  
25 necessary in order for this rule to go into effect?

1           A.    The rule itself, just creating a -- an  
2   application for the EIC.

3           Q.    But at a practical level, in order for  
4   people working in the Austin office to know about the  
5   rule, to implement the rule, what needed to happen in  
6   that 20 days?

7           A.    We had to, you know, inform all our staff  
8   regarding the new policy and procedure and the new  
9   rule, what the requirements were.   So staff training.  
10   Putting into place the use of the application, and  
11   that was for the staff.   We had to do some database  
12   changes for issuance of the election identification  
13   card through the abstract.

14          Q.    And when did that training occur in the  
15   Austin office?

16          A.    We provided that shortly after we knew the  
17   rules were going to be going into effect.   And we  
18   provided information prior to that, just that this  
19   may be going into effect, if the rules are adopted.  
20                   Once they -- we were sure that they  
21   were going to go through in effect we provided that  
22   information to all our front office staff.

23          Q.    Was there any sort of sit-down training  
24   about the new EIC birth certificate?

25          A.    There wasn't much need for that.

1 Q. Why not?

2 A. Because most of the staff are experienced  
3 staff for issuing certified copies, so all they had  
4 to know is that this record is for election purposes,  
5 it's free if you issue it, issue the election card  
6 record.

7 Q. And was there any written material that was  
8 provided to them as part of that sort of basic  
9 heads-up?

10 A. Not that I'm aware of.

11 Q. Okay. And you said that there were changes  
12 to the database that needed to occur. What were  
13 those changes?

14 A. In order to -- the abstract that's issued  
15 off of our database just issued a regular abstract.  
16 We had to change the system to add that little  
17 section that had the election for election  
18 identification purposes.

19 Q. So it was just to change the output so it  
20 would print those two lines?

21 A. Yes.

22 Q. Were there any other changes to the  
23 database?

24 A. That's it.

25 Q. Was there any change to record whether a

1 given individual had received one EIC birth  
2 certificate?

3 A. Yes, that is true, yes.

4 Q. Anything else?

5 A. To the best of my knowledge, no.

6 Q. Okay. Is an individual required to provide  
7 any kind of proof that they need their birth  
8 certificate in order to obtain an EIC, in order to  
9 get the free EIC birth certificate?

10 A. No.

11 Q. So they don't have to submit an affidavit?

12 A. No.

13 Q. Just have to show an EIC application?

14 A. Just fill out the EIC application.

15 Q. Okay. What documents does the individual  
16 who applies for an EIC birth certificate need to show  
17 in order to obtain the EIC birth certificate?

18 A. The same as the regular birth certificate.

19 Q. Are there any forms of primary  
20 identification, to your knowledge, that an individual  
21 who lacks the ID needed to vote under SB 14 would,  
22 nonetheless, have?

23 A. I would have to review those documents in  
24 order to --

25 MR. FREEMAN: I was trying to avoid

1 making too many exhibits, but let's do it. This is  
2 going to be Exhibit 111.

3 (Exhibit Number 111 marked.)

4 Q. (BY MR. FREEMAN) What is this document?

5 A. This is a printout, I believe, of the Texas  
6 Administrative Code, Title 25 181.28.

7 Q. And have you seen this particular provision  
8 before?

9 A. Yes, I have.

10 Q. Okay. So with this document in front of  
11 you to aid you, could you tell me what specifically  
12 the primary forms of identification are?

13 A. Primary forms of identification are  
14 driver's license; federal or State identification;  
15 federal, State or City law enforcement employment  
16 identification card, or an employee badge accompanied  
17 by an employment identification card; offender's  
18 identification card from the department of state  
19 health -- Department of Criminal Justice correction  
20 facility or institution; military identification,  
21 department -- oh, okay.

22 So Department of Homeland Security,  
23 United States Citizenship and Immigration Services  
24 issued; employment authorization document; permanent  
25 resident card; travel documents, reentry permit,

1 refugee travel status, advance parole; SENTRI card,  
2 S-E-N-T-R-I, card; and U.S. citizen identification  
3 card. United States Department of State border  
4 crossing card, (B-1 for business or pleasure, and B-2  
5 for medical purposes); or a visa; concealed handgun  
6 license; pilot's license; or United States passport.

7 Q. And with regard to the documents that  
8 are -- that would be held by noncitizens, these are  
9 to help individuals get a birth record for their  
10 child. Is that correct?

11 A. Correct.

12 Q. Okay. And am I correct that each of these  
13 have to be current and valid?

14 A. Yes.

15 Q. And the offender identification card issued  
16 by the Department of Criminal Justice, is that Texas  
17 only?

18 A. According to the rule here, it says  
19 department -- Texas Department of Criminal Justice.

20 Q. Okay. Does the individual's  
21 identification, does the name on the identification  
22 have to match the name on the birth certificate?

23 A. Yes.

24 Q. So if you have a married woman and her  
25 married name is on her driver's license, is her

1 driver's license not sufficient to obtain the birth  
2 certificate?

3 A. With the exception of that.

4 Q. How does that work?

5 A. We are aware that many individuals who get  
6 married, whether that's male or female, will change  
7 their last name to that or their partner's married  
8 name. So we -- if they have identified all the other  
9 elements on the birth certificate, based on their  
10 identification, we can reasonably deduce that that is  
11 the same individual.

12 However, if there's any question about  
13 that individual's relationship between their  
14 identification and the information that's on the --  
15 on a birth certificate and whether that's the same  
16 person, we will ask for their marriage license.

17 Q. How about a misspelling? If, say -- I  
18 don't know, let's use my name. If my birth record is  
19 Freeman and, like many people do on the phone, my  
20 driver's license said Friedman and I had not bothered  
21 to get it corrected, could I still get the birth  
22 record?

23 A. We will notify you that the information is  
24 incorrect. We will discourage you from getting it  
25 because we believe we would be doing you a disservice



1 by giving you an incorrect birth certificate that  
2 doesn't match your other identification. Because,  
3 through our experience, presenting those two  
4 different documents that have different information  
5 on them, to another agency, for example, Social  
6 Security Administration, they're not going to accept  
7 those two.

8 Q. But could I still get the document if I  
9 told you my driver's license was wrong?

10 A. Yes.

11 Q. How about if an individual has multiple  
12 last names? Say they're from a Hispanic family and  
13 they have both a paternal last name and a maternal  
14 last name? So let's use Representative Trey Martinez  
15 Fischer and let's say that his birth record had  
16 Martinez Fischer and his driver's license just said  
17 Trey Fischer.

18 A. We will inform them that they would need to  
19 match.

20 Q. And so would you not give the birth record?

21 A. We would -- again, we would inform them  
22 that this information should match, you should get  
23 this amended. If they say, no, I want the copy of  
24 the record, we will give it to them.

25 Q. Okay. And if an individual doesn't have

1 any of those forms of primary ID, what are the forms  
2 of secondary identification that are acceptable?

3 A. In accordance to the Texas Administrative  
4 Code, current student identification, any primary  
5 identification that is expired, our policy is  
6 generally 90 days on that, depending on the -- how --  
7 depending on the situation.

8 If it's an older identification where  
9 it's been expired for quite a number of years, we  
10 probably won't accept it. But if it's a little over  
11 90 days, we will accept that.

12 Signed Social Security card or  
13 Numident, DD 214 Form certificate of release set out  
14 in this rule. Wait a second. Oops, sorry. Wrong  
15 side.

16 Medicaid card, Medicare card, Veterans  
17 Affair card, medical insurance card, foreign passport  
18 accompanied by a visa issued by the United States  
19 Department of State, foreign passport in accordance  
20 to the United States Department of State Visa Waiver  
21 Program, certified birth certificate from Department  
22 of State, private company employment identification,  
23 Form I-94 accompanied by an applicant's visa or  
24 passport, Mexican voter registration card, or foreign  
25 identification with identifiable photo of applicant.

1 Q. I have a few questions on those. What is a  
2 Numident?

3 A. Numident is the -- from the Social Security  
4 Administration. It's their -- it's a printout of  
5 their application information.

6 Q. And the DD Form 214 certificate of release,  
7 is that a Texas form?

8 A. No. That's a United States government  
9 form. That's used when someone in military service  
10 is discharged.

11 Q. Okay. And why does a foreign passport have  
12 to be accompanied by a visa establishing -- or issued  
13 by the United States Department of State?

14 A. To ensure -- that helps us ensure that that  
15 is a valid passport.

16 Q. But if it's a foreign passport and, let's  
17 say, someone who is in the United States unlawfully,  
18 but has a child in the United States and that child  
19 becomes a United States citizen, wouldn't this  
20 foreign passport -- or wouldn't an individual  
21 potentially have trouble obtaining a birth record for  
22 that child if they are required to show a visa?

23 MR. SCOTT: Objection; form.  
24 Speculation.

25 A. They could possibly have difficulty.

1 Q. (BY MR. FREEMAN) Okay. And so you had  
2 said before, an individual can show two forms of  
3 secondary identification?

4 A. Uh-huh.

5 Q. Or a form of secondary identification and  
6 two forms of supporting identification?

7 A. Correct.

8 Q. And supporting identification, that's --  
9 that's set out in some other policy. Is that  
10 correct?

11 A. Correct.

12 Q. Okay. Do you know where that policy is?

13 A. We have -- we had information in our  
14 issuance handbook --

15 Q. Okay.

16 A. -- for our processors at the Vital  
17 Statistics office. We provide some information to  
18 our local registrars through the local registrars  
19 handbook.

20 Q. And are those hard requirements or are they  
21 just soft guidelines?

22 A. Soft guidelines.

23 MR. FREEMAN: Okay. If we could have  
24 this marked as Exhibit 112.

25 (Exhibit Number 112 marked.)

1 Q. (BY MR. FREEMAN) First, what is this  
2 document?

3 A. This is the remote front office -- which is  
4 our remote system for issuing birth certificates --  
5 user guide.

6 Q. And if you could turn to page 7 and look  
7 under EIC certificate. Does this refresh your  
8 recollection as to whether an individual can apply  
9 for an EIC birth certificate for someone else, for a  
10 relative?

11 A. It states that the applicant -- make sure  
12 that -- certain that the applicant is the registrant  
13 on the record; so, therefore, it can be deduced that  
14 it has to be the applicant.

15 Q. And does that apply to the Austin office as  
16 well?

17 A. Yes.

18 Q. All right. What is the purpose of that  
19 rule?

20 A. I really can't -- I'm not sure what that  
21 purpose is.

22 Q. And isn't it possible that eliminating the  
23 ability of having an individual apply for a birth  
24 certificate on a relative's behalf related to  
25 individuals who lack ID could create problems for

1 those individuals to be able to provide the  
2 supporting ID that they need?

3 MR. SCOTT: Objection; form.  
4 Speculation.

5 A. It could.

6 MR. FREEMAN: Have this marked as  
7 Exhibit 113.

8 (Exhibit Number 113 marked.)

9 Q. (BY MR. FREEMAN) What is this document?

10 A. This is the application for election  
11 identification birth certificate.

12 Q. And is this used at the Austin office?

13 A. Yes.

14 Q. Is this used at the remote birth  
15 certificate issuance sites as well?

16 A. We provide that to them, but they can also  
17 duplicate for their own application.

18 Q. Does it say, "Application without photo  
19 identification will not be processed"?

20 A. Yes.

21 Q. Why does it say, "Application without photo  
22 identification will not be processed"?

23 A. I'm not sure why it says that.

24 Q. In fact, most people who need an election  
25 identification birth certificate will not have a

1 photo ID. Correct?

2 A. Correct. To the best of my knowledge.

3 Q. And so if an individual comes in to your  
4 office and asks to apply for an EIC birth  
5 certificate, they will be given this form. Correct?

6 A. Uh-huh.

7 Q. And they will be told that the application  
8 without photo -- an application without photo  
9 identification will not be processed?

10 A. In our office, we will let them know that  
11 we need identification, whether that's primary or  
12 secondary.

13 Q. But the form that they're handed will tell  
14 them that the application without photo  
15 identification will not be processed. Correct?

16 A. Correct.

17 Q. And any remote issuance site that uses this  
18 form, they will also be told that an application  
19 without photo identification will not be processed?

20 A. Correct.

21 Q. Okay. Are there any further requirements  
22 specific to an EIC birth certificate of which you're  
23 aware?

24 A. Not that I'm aware of.

25 Q. Let's take five minutes.

1 (Recess.)

2 Q. (BY MR. FREEMAN) So let's turn to the  
3 remote birth certificate issuance sites.

4 A. Okay.

5 Q. Can an individual obtain a certified copy  
6 of a birth record from a remote birth certificate  
7 issuance site?

8 A. Yes.

9 Q. What is a remote birth certificate issuance  
10 site?

11 A. It is a local registrar who, through  
12 contract, has access to our -- the State database of  
13 Vital Statistics records. So they can not only issue  
14 from their own office, but any -- they can issue a  
15 certified copy of any birth that occurred throughout  
16 the state.

17 Q. And so that's just a digital connection?

18 A. Correct.

19 Q. Similar to the connection between the  
20 Social Security Administration and your office?

21 A. Correct.

22 Q. Okay. What is the relationship between  
23 HHSC and the remote birth certificate issuance sites?

24 A. They're under contract through us. They're  
25 a local registrar, so they -- they're under contract



1 through us, and they -- we provide them access to  
2 that.

3 Q. And what -- sort of what is the type of  
4 contract? Are you a paying them? Are they paying  
5 you?

6 A. They pay us \$1.83 per record issued.

7 Q. Okay. Do you have any authority over them?

8 A. They have a contract and, through that  
9 contract, we lay out what the use of that remote  
10 issuance program is used for. If they violate that  
11 contract, we can discontinue their use.

12 Q. And in the last five years, have there been  
13 any instances in which HHSC has discontinued use for  
14 violation of the contract?

15 A. I'm not sure.

16 Q. Okay. So not to your knowledge?

17 A. Not to my knowledge, no.

18 Q. Okay. And HHSC doesn't provide any funding  
19 to the locals?

20 A. No, huh-uh.

21 Q. Okay. Does any -- are there any terms in  
22 that contract that specifically address EICs?

23 A. No.

24 Q. Are there any terms in that contract that  
25 specifically address notices that must be put up in

1 the office?

2 A. No.

3 Q. Are there any terms in that contract that  
4 specifically address the use of particular forms?

5 A. No.

6 Q. Are there any terms in that contract that  
7 specifically address training that employees must  
8 undergo?

9 A. No.

10 Q. Are there any terms in that contract that  
11 address specific procedures that those offices must  
12 follow?

13 A. Not in the contract itself.

14 Q. Does the contract incorporate any  
15 procedures that --

16 A. There's some general information, to the  
17 best of my knowledge, without seeing the contract  
18 itself, that states what it -- the remote should be  
19 used for, for searching and document production,  
20 vital -- birth certificates.

21 It talks about submitting -- I believe  
22 it talks about submitting, like, if they accidentally  
23 print off a record and we need to void it and remove  
24 from the lifetime print count, that accidental print.  
25 So they will submit information on that. But I

1 haven't seen the contract in a while, so...

2 Q. What is the lifetime print count?

3 A. Ten.

4 Q. Is that the maximum number of birth  
5 certificates an individual can obtain?

6 A. No. That's the maximum number that they  
7 can obtain without having to -- without us having to  
8 investigate the reason why they have already received  
9 ten certified copies of the birth certificate.

10 Q. What would that investigation entail?

11 A. It goes through the Office of Inspector  
12 General and they just look into the background of the  
13 individual and how many copies were issued, what the  
14 lifespan was on those copies, see if there's any  
15 fraud investigations going on on that individual.

16 And if everything looks okay, we will  
17 issue another copy. If there's any question about  
18 what that -- if they find evidence that there's been  
19 abuse on the record, they won't issue a copy, and it  
20 has to go to hearing after that.

21 Q. And how long does that investigation  
22 usually take?

23 A. I'm not sure exactly the extent of that  
24 investigation.

25 Q. But the investigation needs to be complete

1 before an individual with ten -- with a print count  
2 of ten can obtain an additional copy?

3 A. Yes.

4 Q. Is there a term -- does the term "abused  
5 record" apply in this context?

6 A. I believe it does in accordance to -- to  
7 the best of my knowledge, to the Texas Administrative  
8 Code, yes.

9 Q. Okay. But -- so an abused record is a  
10 record of print count of ten or more?

11 A. Uh-huh.

12 Q. Okay.

13 MR. SCOTT: Yes?

14 A. Yes.

15 Q. (BY MR. FREEMAN) So if we can go back real  
16 quickly to the contract and violating the contract,  
17 are there any particular bases that you're aware of  
18 in which a remote birth certificate issuance site  
19 would have their contract terminated?

20 A. If they were not paying us the \$1.83 per  
21 record issued, we would probably terminate their  
22 contract. If they have been just searching on the  
23 database without document production, we would more  
24 than likely investigate it; and if it continues,  
25 terminate their contract.

1 Q. Okay. Anything else you can think of?

2 A. Not offhand.

3 Q. So you're not aware of any additional bases  
4 why you've terminated a contract?

5 A. Mm-hmm.

6 Q. And by "mm-hmm" you mean?

7 A. No. Sorry, sorry, sorry.

8 Q. Do these sites volunteer to participate in  
9 issuing birth certificates?

10 A. Yes. Off the remote.

11 Q. Off the remote. HHSC doesn't ask any  
12 particular locations to serve as remote birth  
13 certificate issuing sites?

14 A. No.

15 Q. Okay. If a local office doesn't want to  
16 offer EIC birth certificates, does HHSC have any  
17 recourse?

18 A. The way the -- so the way the law is  
19 written, State Registrar has supervisory power over  
20 Vital Statistics processes with their local  
21 registrars, deputy registrars, sub registrars.  
22 That's what the law says. So we will go and do  
23 inspections; however, we don't have any enforcement  
24 power over stopping them from doing -- from not  
25 following policy and procedure.

1 Q. Have you conducted any inspections to see  
2 if offices are issuing EIC birth certificates?

3 A. We've conducted -- we conduct inspections  
4 in general. Our field services goes out and conducts  
5 site visits on a regular basis.

6 Q. And as part of those site visits, have you  
7 in any way verified that these offices are offering  
8 EIC birth certificates?

9 A. Yes. That's part of our site visit  
10 inspection process, is when we're talking about  
11 issuing birth certificates, we will ask them, do you  
12 issue the election identification record.

13 Q. And how often do you conduct site visits?

14 A. We generally conduct anywhere between 50  
15 and 70 site visits a year.

16 Q. And how many, roughly, remote birth  
17 certificate issuance sites are there?

18 MR. SCOTT: If I can intervene.  
19 We've prepared for you a list of those so it  
20 wouldn't be...

21 A. I'm not sure exactly the amount, but it's  
22 over --

23 Q. (BY MR. FREEMAN) Roughly 200?

24 A. Yeah, about that.

25 MR. FREEMAN: Why did we have this

1 marked as long as we're relying on it. This is  
2 Exhibit 114.

3 (Exhibit Number 114 marked.)

4 Q. (BY MR. FREEMAN) This is Exhibit 114, and  
5 this is a list of your remote birth certificate  
6 access sites. Correct?

7 A. Yes.

8 Q. And you brought this to the deposition.  
9 Correct?

10 A. Yes.

11 Q. And so in a given year, you're going to be  
12 doing a site visit at a quarter to a third of these  
13 remote birth certificate issuance sites?

14 A. Well, depending on -- we do them for all  
15 local registrars. We have over -- we have 421 local  
16 registrars in the state of Texas. This is just the  
17 ones who are on the remote.

18 So we will check on the remote status  
19 and what they're doing with the remote, but also we  
20 check with -- those who are not on a remote, we will  
21 check to see if they are issuing EICs through their  
22 own records.

23 Q. Okay. So we're talking about roughly an  
24 eighth of the sites are going to have a visit in a  
25 given year?

1 A. Uh-huh, yes.

2 Q. Okay. Are these sites aware of an audit or  
3 of a site visit when you're coming in?

4 A. Yes. We prepare them ahead of time.

5 Q. Okay. So it's possible that the sites  
6 could be telling you that they're issuing the EIC  
7 birth certificates, but you have no knowledge of  
8 whether they're issuing them when there isn't a site  
9 visit going on. Correct?

10 A. Correct.

11 Q. And do you monitor their procedures  
12 concerning letting individuals know that an EIC birth  
13 certificate is available?

14 A. We will ask them how they proceed with any  
15 issuance process.

16 Q. Okay. But there are no posted notices  
17 required in those offices. Right?

18 A. No.

19 Q. And you're just asking them if they let  
20 people know?

21 A. Uh-huh. Yes.

22 Q. Okay. But there's no specific procedure in  
23 that office like there is in the Austin office, where  
24 an individual is asked for what purpose they need  
25 their birth certificate. Correct?



1 A. That is correct.

2 Q. And the State doesn't pay for staffing for  
3 those offices. Right?

4 A. No. They're separate offices from us.

5 Q. And you guys don't -- sorry.

6 The State of Texas doesn't supply the  
7 supplies for birth certificates. Correct?

8 A. No.

9 Q. And that includes the security paper?

10 A. Security paper, yes.

11 Q. But EIC birth certificates should be  
12 available at remote birth certificate issuance sites.  
13 Right?

14 A. Correct.

15 Q. Other than the procedure we just discussed  
16 where an individual is asked what they need their  
17 birth certificate for, are there any other ways in  
18 which you're aware that procedures differ between the  
19 Austin office and the remote birth certificate  
20 issuance sites?

21 A. No.

22 Q. Now, each EIC birth certificate effectively  
23 costs your office money when someone asks for one at  
24 the Austin office. Correct?

25 A. Uh-huh.

1 Q. How much money does it cost your office?

2 A. I can give you -- it would cost us, off --  
3 just off the top, \$12 per one. That's not including  
4 the cost of the paper, cost of labor, computer usage.  
5 We spend quite a bit of funds on changing the  
6 database, so that would be available.

7 Q. But on a per-birth-certificate basis, in  
8 your office, it's \$10 to Texas.gov, \$2 for the  
9 statutory fee?

10 A. Right.

11 Q. And then labor. Correct?

12 A. Uh-huh. Yes.

13 Q. Security paper --

14 A. Yes. Yes and yes.

15 Q. And do the local offices also have to pay  
16 \$10 to Texas.gov?

17 A. No.

18 Q. Do they -- do the local offices waive the  
19 \$2 fee, the statutory fee?

20 A. No, they do not.

21 Q. So if I get an EIC birth certificate in a  
22 local office, am I correct, I have to pay the \$2  
23 statutory fee, plus the \$1 local office fee?

24 A. The -- they will pay, at a minimum, \$2.

25 Q. Okay.

1 A. Some locals charge \$1 more. The statute  
2 says they may charge \$1 per issuance for their  
3 records preservation. Some do, some don't.

4 Q. Approximately, to the best of your  
5 knowledge, what percentage of the locals charge the  
6 \$1?

7 A. I wouldn't know.

8 Q. Okay. That's fine. And you don't know how  
9 much the security paper costs per birth certificate?

10 A. No, I don't.

11 Q. Okay. So the locals, am I correct, they  
12 have a financial incentive not to -- if a person  
13 comes in looking for a birth certificate -- let me  
14 start over.

15 If a person comes into a local asking  
16 for a birth certificate, the local will make money if  
17 they get a regular birth certificate, but will lose  
18 money if they get an EIC birth certificate. Correct?

19 A. A local?

20 Q. Yeah.

21 A. Yeah. Yes.

22 Q. And so the locals have a financial  
23 incentive for each person who walks in, to get them  
24 to get a regular certified birth certificate rather  
25 than an EIC birth certificate. Right?

1 A. Financial incentive.

2 Q. It will make money rather than lose money?

3 A. Right. Yeah, yeah.

4 Q. And you're not aware of any specific  
5 procedures that the locals have adopted to make sure  
6 that people know the EIC birth certificate is  
7 available?

8 A. No.

9 Q. How long does it take to obtain a birth  
10 certificate from the locals?

11 A. Depending on the local office, it could be  
12 minutes. Could be as long as our wait is, which  
13 is -- could be 10 to 20 minutes. And, you know,  
14 it -- depending on if they have to do a search, a  
15 couple hours.

16 Q. What type of search would they be doing at  
17 a local?

18 A. Searching their own records.

19 Q. So that's only if they were the place where  
20 the birth occurred?

21 A. Right. Correct.

22 Q. So if an individual comes in to a local in  
23 Houston and they were born in Dallas, and the digital  
24 doesn't match up, they can't do the type of manual  
25 search that you would do in Austin. Correct?

1 A. Correct.

2 Q. Okay. So either they're going to get it  
3 immediately or, if they were born in that county,  
4 they're going to get it after a search or they're not  
5 going to get it. Correct?

6 A. Correct.

7 Q. And that manual search, they're still going  
8 to get it relatively quickly. Correct?

9 A. Correct.

10 Q. Rough estimate on how long it usually  
11 takes?

12 A. It could vary on the office. Could be  
13 anywhere between a couple of minutes, depending on  
14 the size. If it's a small office, couple of minutes.  
15 If it's the City of Dallas or Tarrant County clerk's  
16 office, could take a while.

17 Q. Does it ever take multiple days?

18 A. That would -- I wouldn't know.

19 Q. Okay.

20 A. Yeah. That doesn't sound feasible, but it  
21 could. We would have to pull each office to find out  
22 how long.

23 Q. So you have no knowledge of whether it does  
24 or doesn't, in some cases, take several days?

25 A. No.

1 Q. Okay. And the State has no control over  
2 the hours of those offices?

3 A. No, we don't.

4 Q. No control over staffing?

5 A. No.

6 Q. Who does control those offices?

7 A. Those local governments.

8 Q. Okay. Is there anything that an office has  
9 to do to qualify to be a remote birth certificate  
10 issuance site?

11 A. They just have to be a local registrar.

12 Q. Okay. Is there any additional training?

13 A. No. We provide them with the instructions,  
14 the user guide to the system.

15 Most are local registrars already, so  
16 they know what the process is for issuing a  
17 certificate. It's just being able to actually use  
18 the system in order to issue, so...

19 Q. And it's just a query through the Internet?

20 A. Yes.

21 Q. Okay. Is an office ever denied when they  
22 request to be a local -- a remote birth certificate  
23 issuance site?

24 A. To my knowledge, no.

25 Q. Is there a remote birth certificate

1 issuance site in every county?

2 A. No.

3 Q. Do you know how many counties don't have a  
4 remote birth certificate issuance site?

5 A. I'm not sure how many locals aren't. It's  
6 roughly -- well, county-wise, I believe it's -- I  
7 believe we -- somewhere around 60 or so counties are.  
8 But there's a local registrar in each county.

9 MR. FREEMAN: Okay. So this is  
10 slightly redundant with the prior exhibit, but I'm  
11 going to mark this Exhibit 115.

12 (Exhibit Number 115 marked.)

13 Q. (BY MR. FREEMAN) What is this document?

14 A. This appears to be a printout from our --  
15 from the Department of State Health Services Vital  
16 Statistics Unit website of a list of remote access --  
17 offices that have the remote access.

18 Q. And does this list every county that does  
19 not have a remote access site?

20 A. It will. We have every county in there and  
21 if it doesn't, we'll put "no remote access."

22 Q. Okay. And I don't know if you want to  
23 check this. But are there approximately 85 counties  
24 that do not have remote birth certificate issuance  
25 locations?

VICTOR FARINELLI

5/9/2014

120

1 A. That sounds correct.

2 Q. Okay. And there are no more than five per  
3 county, even in the largest counties. Correct?

4 A. Correct.

5 Q. No more than five remote birth certificate  
6 access sites?

7 A. Correct.

8 Q. Certainly far fewer than there are, for  
9 example, polling places in a given county. Correct?

10 A. Correct.

11 Q. Are there any plans to change these  
12 locations this year?

13 A. No.

14 Q. Well, because you don't --

15 A. To the best of my knowledge, no.

16 Q. Yeah. You don't decide who is going to be  
17 the access site; the locals decide. Correct?

18 A. Right.

19 Q. And if you can turn to Harris County, how  
20 many locations are there in the city of Houston?

21 A. Four.

22 Q. And if you can turn to Dallas County, how  
23 many are there in the city of Dallas?

24 A. There's two.

25 Q. And just one more. If you can turn to



1 Bexar County, how many are there in the city of  
2 San Antonio?

3 A. That's one.

4 Q. So for the entire city of San Antonio,  
5 there's only one place where you can go to get a  
6 birth certificate, unless you go to the local  
7 registrar that has your original certificate?

8 A. One office -- well, one entity, yeah.

9 Q. Do you know if that entity offers these  
10 services at multiple locations?

11 A. Many offices do. So like the City of  
12 San Antonio does have sub offices that will have  
13 access to that.

14 Q. But these sub offices are not listed on the  
15 complete list?

16 A. Right. Yeah. These are just the local  
17 registrars that have access to our system.

18 Q. Okay. And do you know where those lists of  
19 sub entities would be if someone went looking for  
20 them on your website?

21 A. You would have to contact that local  
22 office.

23 Q. Okay. So on your website there's no  
24 additional information?

25 A. No.

1 Q. Okay. And you have no ability to control  
2 where those locations are in major urban areas. Is  
3 that correct?

4 A. Correct.

5 Q. So you have no ability to control whether  
6 they're on or near public transit. Correct?

7 A. No.

8 Q. And do you have any knowledge of whether  
9 they're on or near public transit?

10 A. No.

11 Q. And you have no ability to control whether  
12 they're placed in predominantly minority communities.  
13 Correct?

14 A. No.

15 Q. And you have no knowledge of whether  
16 they're in predominantly minority communities?

17 A. No.

18 Q. Do you know if any of these remote birth  
19 certificate issuance sites are co-located with DPS  
20 offices?

21 A. I'm not sure if they are or not.

22 Q. Okay. Do you know if any of these remote  
23 birth certificate issuance sites are co-located with  
24 places where DPS or the office of Secretary of State  
25 has set up a mobile station for issuing EICs?

1 A. I'm not sure, no.

2 Q. Okay. So if an individual doesn't have a  
3 birth certificate and they need to go to a remote  
4 access site to get their birth certificate so they  
5 can get their EIC, that's going to require multiple  
6 trips, to your knowledge?

7 A. It could possibly.

8 Q. All right. Let's go on to those local  
9 registration offices. Can an individual obtain a  
10 copy of their birth certificate from a local  
11 registration office?

12 A. If they were born in that registration  
13 district or they have remote access.

14 Q. Okay. And so some local registration  
15 offices are remote access sites and some are not.  
16 Correct?

17 A. Correct.

18 Q. And how does a person know what local  
19 registration district they're in within a given  
20 county?

21 A. With many counties, the county clerk is the  
22 only local registrar in that county.

23 Q. Okay.

24 A. Depending on the county. Tarrant County,  
25 there may be multiple. They may not know unless they

1 know what city they were born in.

2 Q. Okay. And so if you were born in Tarrant  
3 County and you go to the local registrar in  
4 Arlington, but you were actually born in Fort Worth,  
5 you're not going to be able to get your birth  
6 certificate unless the one that you go to is also a  
7 remote access site. Is that correct?

8 A. Correct.

9 Q. What is the relationship between HHSC and  
10 the local registration offices?

11 A. We perform the same functions. We're the  
12 keeper of vital records. We have -- again, we can  
13 give them instructions on what they're to do when it  
14 comes to issuance of Vital Statistics records and  
15 security and keeping those records secure. We  
16 perform inspections; however, we don't have any  
17 enforcement power.

18 Q. Okay. So is it essentially a local  
19 government function that you supervise?

20 A. Correct.

21 Q. But you don't have enforcement power to  
22 make sure that they follow those regulations?

23 A. Correct. The only -- the only thing that  
24 we can do is -- is state to that local government,  
25 this person is not doing their job.

1 Q. Okay.

2 A. And it's up to that local government to  
3 take action.

4 Q. And how often does that happen?

5 A. Doesn't happen that often.

6 Q. Does HHSC provide any funding for the local  
7 registration offices?

8 A. No.

9 Q. Does HHSC conduct any training with the  
10 local registration offices?

11 A. Yes, we do.

12 Q. And what type of training?

13 A. We -- during our site visits, those are  
14 also training purposes, so we'll spend quite a few  
15 hours there actually inspecting and doing training.

16 We have regional conferences every  
17 summer, which is four -- three to four locations  
18 throughout the state, where local registrars can come  
19 and take training.

20 Plus, we have an annual conference  
21 every year in Austin, where local registrars -- not  
22 only local registrars, but all our service and source  
23 providers can come and get Vital Statistics training.

24 Q. So the training that you conduct during  
25 site visits, that's only about one out of -- we said

1 every eight offices per year. Correct?

2 A. Correct.

3 Q. And the conferences, are those mandatory or  
4 optional?

5 A. Optional.

6 Q. Okay. And does HHSC provide specific  
7 procedures to the local registration offices?

8 A. Yes.

9 Q. Where are those procedures set out?

10 A. They're in the local registrar handbook.

11 Q. Is that the document that we already  
12 reviewed a moment ago?

13 A. No. That's the remote issuance.

14 Q. That was the remote issuance handbook.  
15 Okay. Different document?

16 A. Different document.

17 Q. Are there any other guidelines besides that  
18 handbook?

19 A. What it -- what's laid out in our rules and  
20 laws.

21 Q. Okay. If an individual applies for a  
22 copy -- a certified copy of a birth certificate at a  
23 local registration office, one that is not a remote  
24 office, is there any extra cost beyond the \$22?

25 A. If they charge the dollar preservation fee.

1 Q. Okay. So those offices can also charge a  
2 \$1 preservation fee?

3 A. Yeah. Depends on -- yeah. It's per local  
4 registrar, not per remote.

5 Q. And, again, in most -- just to get through  
6 this quickly. In terms of timing, it's the same  
7 timing that we discussed before for a local search?

8 A. Correct.

9 Q. Shouldn't take very long?

10 A. Correct.

11 Q. Do they -- well, if you're going to the  
12 local, is it only a manual search or do they have  
13 some kind of digitized system?

14 A. Many local registrars have digitized  
15 systems.

16 Q. How many do not?

17 A. I'm not aware of how many that do not.

18 Q. Do you know roughly what share?

19 A. No.

20 Q. Okay. Is it most of them that have  
21 digitized?

22 A. Most of them are local governments that  
23 also deal with other types of documents besides Vital  
24 Statistics, so they are addressing many different  
25 issues in that. So they -- most of them track that

1 information in their -- in a document repository  
2 system.

3 Q. So if they have the digitized documents,  
4 about how long should it take to pull up someone's  
5 birth record?

6 A. Shouldn't take that long. Minutes.

7 Q. And if they don't have a digitized system,  
8 about how long does it usually take to retrieve a  
9 birth record?

10 A. Depending on the size, anywhere between  
11 five minutes, but it could be longer.

12 Q. Okay. Do you know of any instance in which  
13 it would take more than six days?

14 A. Six days?

15 Q. Six days.

16 A. Not that I'm aware of.

17 Q. Is it possible?

18 A. It's possible.

19 Q. Okay. Are EIC birth certificates available  
20 from the local registration office, not using your  
21 remote access list?

22 A. Yes.

23 Q. But that person has to go to the local  
24 registration office that holds their original birth  
25 record. Correct?



1 A. Correct.

2 Q. Do they use the same procedures as the  
3 remote access sites that have the digital connection  
4 to Austin?

5 A. Yes, they do.

6 Q. Could these remote registration offices  
7 decide they don't want to issue EIC birth  
8 certificates?

9 A. We instruct them that they have to. But,  
10 again, if they're not following procedure, we can  
11 tell them that they're not following procedure, and  
12 then at that point have to pursue going through their  
13 local government supervisor and telling them they're  
14 not following procedure.

15 Q. And so you have no control to make them  
16 issue the EIC birth certificates. Correct?

17 A. Correct.

18 Q. And other than the local visits that they  
19 know are coming, you don't perform any kind of audits  
20 to make sure that they're issuing EIC birth  
21 certificates. Correct?

22 A. We ask them to complete self-assessment  
23 surveys every year.

24 Q. Okay.

25 A. But it's not mandatory.

1 Q. Okay. Anything else?

2 A. No.

3 Q. And just like the local -- the remote  
4 access sites, the State doesn't pay for staffing for  
5 local registration offices?

6 A. No.

7 Q. Doesn't provide birth certificate supplies?

8 A. No.

9 Q. And like the remote access sites, the local  
10 registration offices have a financial incentive not  
11 to offer the EIC birth certificates. Correct? They  
12 lose money when they offer --

13 A. Yes, they lose money.

14 Q. Okay. And do you know if any of the remote  
15 access sites -- excuse me, any of the local  
16 registrations offices that aren't remote access sites  
17 are co-located with DPS?

18 A. I'm not sure.

19 Q. Okay. Are there any additional ways,  
20 besides what we have discussed -- online, by mail, in  
21 Austin, remote access sites, and local registration  
22 offices -- that an individual can obtain a certified  
23 copy of a Texas birth certificate?

24 A. No.

25 Q. Are there any additional ways besides at

VICTOR FARINELLI

5/9/2014

131

1 Austin, at a remote access site, or at a local  
2 registration office that an individual can obtain an  
3 EIC birth certificate?

4 A. They can only get it through our office --  
5 they have to come in person, so local registrar  
6 office, remote access office, and our office.

7 Q. Do you know if there were any press  
8 releases concerning the availability of an EIC birth  
9 certificate at a reduced price?

10 A. No, there were not.

11 Q. Was there any media campaign?

12 A. No.

13 Q. Was there any direct notice to registered  
14 voters?

15 A. No.

16 Q. And we've already agreed there's no notice  
17 of EIC birth certificate availability posted at the  
18 Austin office of HHSC. Right?

19 A. No.

20 Q. And there's no notice posted in the remote  
21 birth certificate access sites?

22 A. No.

23 Q. And there's no notice posted at the local  
24 registration offices. Correct?

25 A. Not that I'm aware of, no.

1 Q. Are you aware of whether HHSC has provided  
2 any information to DPS to give to individuals who try  
3 to apply for an EIC, but don't have a birth  
4 certificate?

5 A. No.

6 Q. So there's been no effort to educate  
7 individuals who need an EIC and need a birth  
8 certificate that a birth certificate is available at  
9 a reduced price. Correct?

10 A. Correct.

11 Q. Do you know if there's anything on the  
12 general public section of your website that lets  
13 voters know that an EIC birth certificate is  
14 available at a reduced price?

15 A. General public section of the Vital  
16 Statistics website?

17 Q. Yes.

18 A. No.

19 Q. No, you don't know; or, no --

20 A. No, there's nothing on the general...

21 Q. Do you know where on the website that  
22 information would be?

23 A. We have information for the EIC card on our  
24 Vital Statistics partners' portion of the website,  
25 and that's for our local registrars.

1 Q. Okay. What documents are generally  
2 circulated to staff at the Vital Statistics office in  
3 Austin when there's a change to the laws or  
4 regulations affecting their work?

5 A. We send out notices through e-mail, and the  
6 individual managers will discuss the information with  
7 them.

8 Q. Was a similar notice by e-mail sent when  
9 there was a change for the EIC birth certificates?

10 A. I believe there may not have been. But  
11 they -- it was only for the front office individuals,  
12 so...

13 Q. What documents are used -- are sent to the  
14 remote birth access offices when there are changes to  
15 laws or regulations affecting issuance of certified  
16 copies of birth certificates?

17 A. We generally send out -- so we try to send  
18 out as much information as possible, and we will send  
19 out a letter or memos under Geraldine Harris's name  
20 to all the local registrars. If they have a fax  
21 number and we have that, we will send them a fax  
22 blast of the new information.

23 We have an e-mail distribution list  
24 through GovDelivery. We will also send information  
25 through GovDelivery.

1 Q. What is GovDelivery?

2 A. It is a system that the Texas government  
3 uses for an e-mail LISTSERV. There's many Texas  
4 government agencies that use that, DSHS, HHSC uses  
5 it.

6 Q. Do you have any way to determine whether  
7 the local offices are reading those blasts that go  
8 out?

9 A. No.

10 Q. Do you know specifically whether that type  
11 of information went out regarding the availability of  
12 the EIC birth certificates?

13 A. Yes, it did.

14 Q. Has any training occurred at any conference  
15 thus far about EIC birth certificates?

16 A. Yes. We had a panel at the annual  
17 conference regarding the electronic -- the election  
18 identification card and that -- and also other voter  
19 requirements that the local registrars had to comply  
20 with.

21 Q. Do you know how many people attended that  
22 panel?

23 A. No, I don't.

24 Q. Was that a panel for everyone who appeared  
25 or was that one of several panels -- or for everyone

1 at the conference or was that one of several panels  
2 in a time slot?

3 A. It was one of several panels in a time  
4 slot. But any of the conference attendees could have  
5 attended.

6 Q. And approximately how many individuals  
7 attended that conference?

8 A. It was over 600.

9 Q. And do you know how many of those were  
10 employees at local registration offices?

11 A. Offhand, no.

12 Q. Usually at the conference, the annual  
13 conference, about how many -- what percentage,  
14 roughly?

15 A. I would say 25 to 35 percent are local  
16 registrars.

17 Q. Okay. Or employees of local registrars?

18 A. Or employees of local registrars.

19 Q. Do you know if there were any handouts at  
20 that panel?

21 A. I'm not sure if there was or not.

22 Q. Other than that panel and any training that  
23 may have gone on during local site visits between  
24 October and the present, has there been any other  
25 training regarding EIC birth certificates?

1           A.    We briefly mentioned it at our regional  
2   conferences when the rules were being put into place,  
3   but we didn't do any specific training on it because  
4   the policies and procedures weren't available yet.

5           Q.    Okay.   And we've already discussed, HHSC  
6   doesn't provide specific guidelines about informing  
7   people of the availability of EIC birth certificates?

8           A.    Correct.

9           Q.    Do you have any specific information  
10   regarding the number of remote access offices that  
11   have -- that you know have offered EIC birth  
12   certificates?

13          A.    We have the number of EICs that were issued  
14   off of remote sites. I don't have each individual  
15   office that have issued them, but I have the number  
16   that have been issued.

17          Q.    The EIC birth certificates?

18          A.    Yeah.

19          Q.    Do you know what that number is?

20          A.    Off the remote, 60.

21          Q.    And do you know how many EIC birth  
22   certificates have been issued from local registration  
23   offices?

24          A.    No. Because there -- we -- we're not  
25   required to track that --



VICTOR FARINELLI

5/9/2014

137

1 Q. Okay.

2 A. -- because those are their individual  
3 records.

4 Q. Do you know how many have been issued from  
5 the Austin office?

6 A. We have not issued any.

7 Q. Okay. So at the present, there have been  
8 no instances in which the EIC birth certificate has  
9 been offered absolutely for free. Correct?

10 A. At the Department of State Health Services?

11 Q. Yes.

12 A. We haven't had anybody come in and ask for  
13 it.

14 Q. But at the present -- let me start over.

15 The Department of State Health  
16 Services is the only office, to your knowledge, that  
17 is waiving the \$2 statutory fee?

18 A. Correct.

19 Q. And the Department of State Health Services  
20 has never had to waive that fee yet because no one  
21 has come into the Austin office asking for an EIC  
22 birth certificate. Correct?

23 A. Correct.

24 Q. So at present, no EIC birth certificates  
25 have been issued for free. Correct?

1 A. Correct.

2 Q. And other than the remote -- excuse me --  
3 the site visits that you've conducted, there are no  
4 procedures in place to ensure that when an individual  
5 goes into a remote access office and asks for a birth  
6 certificate that they need for an EIC, that they're  
7 getting the EIC birth certificate. Correct?

8 A. Correct.

9 Q. And you don't know whether those offices  
10 are specifically requiring the individual from the  
11 public to ask for an EIC birth certificate  
12 specifically. Correct?

13 A. Correct.

14 Q. And you don't know how -- those 60 EIC  
15 birth certificates that have been issued from local  
16 access offices, they could all have been issued from  
17 one office. Correct?

18 A. They could have been, yes.

19 Q. You have no knowledge to the contrary?

20 A. No.

21 Q. Okay. If we can turn back to the proposed  
22 amendment, which I believe is 107. Do you see the  
23 fiscal note?

24 A. Fiscal. Okay.

25 Q. Am I correct that the fiscal note states

1 that, "Due to the low number of individuals who have  
2 requested an EIC from the DPS for each year of the  
3 first five years that the section is in effect, there  
4 will be no fiscal implications to State or local  
5 governments as a result of enforcing and  
6 administering the section as proposed"?

7 A. That's correct.

8 Q. And at the top of this same page, it states  
9 that -- this proposed rule states that the DPS  
10 reports that as of the publication date of this  
11 proposed amendment, fewer than 20 individuals  
12 statewide have requested an EIC. Correct?

13 A. Correct.

14 Q. Now, you've already issued more EIC birth  
15 certificates than at the time of this proposal there  
16 have been EICs. Correct?

17 A. Correct.

18 Q. At the time that the regulatory amendment  
19 was proposed, there had never been a statewide  
20 election while SB 14 was in place. Correct?

21 A. Correct.

22 Q. Do you know what HHSC's basis was to  
23 believe that there would not be an increase in demand  
24 for EIC birth certificates?

25 A. This basis was based on the original bill

1 analysis that was done on SB 14 regarding  
2 certificates of birth that were requested  
3 specifically for voter -- for voting purposes.

4 At that time, we had less than one  
5 percent of all individuals coming in to request a  
6 certified copy of a birth certificate were requesting  
7 them for voting purposes.

8 Q. I'm sorry, I'm confused. Oh, I -- and  
9 those were individuals who needed a birth certificate  
10 to vote under the predecessor rules before --

11 A. Prelaw.

12 Q. -- SB 14?

13 A. Correct.

14 Q. But under that rule, didn't -- wasn't  
15 anyone available -- couldn't anyone vote just with  
16 their voter registration card?

17 A. They could.

18 Q. And everybody got a voter registration card  
19 in the mail. Right?

20 A. Yeah.

21 Q. So how did that -- how did the fact that  
22 people weren't needing birth certificates for the  
23 purpose of voting under the predecessor to SB 14, how  
24 did that support the idea that they weren't going to  
25 need it under SB 14?

1 A. This was just -- to my knowledge -- the  
2 best of my knowledge -- I'm not sure how -- where  
3 this came from, but this was what was -- this is how  
4 that was derived.

5 Q. Okay.

6 A. I'm not sure exactly why it was used here.

7 Q. Okay. And that's fine. And I know that  
8 you're not specifically here to talk about these  
9 regulations, and I appreciate that, and I appreciate  
10 your willingness to testify to the extent of your  
11 knowledge.

12 Do you know how many EIC birth  
13 certificates were issued between October 21st, 2013,  
14 and the November 2013 general election?

15 A. I -- we have a printout of what was issued  
16 each month. But offhand, I do not know.

17 Q. And how are the EIC birth certificates that  
18 have been issued from the remote access offices, how  
19 are those tracked?

20 A. They are tracked through our database. And  
21 the way the system was designed, it -- if they were  
22 doing a regular abstract, it goes from one and gets  
23 marked one way. If it's a -- if it's a remote for  
24 election identification purposes, it's marked another  
25 way. So when it's marked in our database separately.

1 Q. And does anyone see an abstract of that  
2 data on a monthly basis?

3 A. We don't check it on a monthly basis, no.

4 Q. How often do you check it?

5 A. When we're asked how many have been issued.

6 Q. Okay. So in this case, you happen to know  
7 it was 60 because you checked in preparation for this  
8 deposition?

9 A. Yes, we checked prior to that.

10 Q. Do you know if anyone had checked  
11 previously at any point?

12 A. When the process was first started, we  
13 checked to see how many were issued. But I'm not  
14 sure exactly what that number was at that time.

15 Q. Do you know how long that was after the  
16 process first started?

17 A. Generally a few weeks after. I'm not sure  
18 exactly what the date was.

19 Q. So that may have been just around the  
20 November election. Correct?

21 A. Correct.

22 Q. Do you still have a copy of an output of  
23 that search?

24 A. No.

25 Q. Okay. Based on the number of EIC birth

1 certificates that have been issued to date, would you  
2 describe this program as successful?

3 A. I wouldn't be a really good -- I couldn't  
4 really answer that one.

5 Q. Do you know if anyone is going to assess  
6 this program?

7 A. To the best of my knowledge, no.

8 Q. Are there any plans to change this program  
9 in the future?

10 A. To the best of my knowledge, nope.

11 Q. Are there any technical impediments to  
12 connecting -- let's go off the record.

13 (Lunch recess.)

14 Q. (BY MR. FREEMAN) So during the break, your  
15 counsel gave me a few of the documents that you've  
16 reviewed over the time that you were preparing for  
17 this deposition, and so I just wanted to ask you a  
18 few follow-up questions about topics we had already  
19 covered based on these documents.

20 A. Okay.

21 MR. FREEMAN: So first off, I'm going  
22 to mark this as 116.

23 (Exhibit Number 116 marked.)

24 Q. (BY MR. FREEMAN) And what is this  
25 document?

1           A.     This is from our website. This is some  
2 information that we've provided to -- on our website  
3 regarding the new birth certificate for election  
4 identification for our -- and this is for our local  
5 registrars.

6           Q.     And so as you said before, that's not on  
7 the public -- the section of your website for the  
8 general public. Right?

9           A.     Right. It's more for our partners.

10          Q.     How would someone go about finding that  
11 document on your website?

12          A.     If they go to the regular website, they  
13 select VSU partners, I believe. And there's a link  
14 on that page, I believe, where they can get to this.

15          Q.     Okay.

16          A.     It's also under our hot topics section.

17          Q.     Where is the hot topics section?

18          A.     It's on the Vital Statistics partners front  
19 page.

20          Q.     Okay. And we only have one copy of this  
21 document, and it would be rather difficult to make it  
22 an exhibit, so let me -- let's do it this way. If  
23 you were to look at this document, would this refresh  
24 your recollection concerning the topics that were  
25 discussed at the annual conference regarding election



1 identification certificate --

2 A. Yes.

3 Q. -- and birth certificates?

4 Was there anything discussed  
5 concerning voters abstract information?

6 A. Voters abstract information, yes. But that  
7 specifically is for -- meaning for local registrars  
8 to provide to the Secretary of State's office.  
9 They're required by the election code to provide an  
10 abstract of death to the Secretary of State's office  
11 for when a person -- a voter over 18 years of age  
12 dies, to take them off the voter roles. That's what  
13 that is.

14 Q. So that was further discussion on the same  
15 panel concerning voter registration list maintenance?

16 A. Yeah.

17 Q. Okay.

18 A. Yeah.

19 Q. And does this confirm your prior  
20 recollection that there were multiple panels going on  
21 at the same time?

22 A. Yes.

23 Q. Okay.

24 A. Yes.

25 Q. And there were, in fact, three different

1 panels going on at the same time?

2 A. Three, yes.

3 MR. FREEMAN: Great. I'm going to  
4 mark it as 117.

5 (Exhibit Number 117 marked.)

6 Q. (BY MR. FREEMAN) Was this the -- sorry.  
7 What is this document?

8 A. It is -- this is what was sent through the  
9 GovDelivery LISTSERV of information about the  
10 election identification certificate.

11 Q. Is this the only e-mail that went out to  
12 that LISTSERV?

13 A. Yes.

14 Q. And does that describe in any detail any  
15 procedures relating to EIC birth certificates?

16 A. No.

17 Q. Who sent this e-mail?

18 A. It was sent by our field services.

19 Q. And so there's someone in the field  
20 services office --

21 A. Specifically Derek Johnson was the one who  
22 sent it.

23 Q. Okay. Who is Mr. Johnson?

24 A. He's one of the field services  
25 representatives.

1 Q. Okay. And so if a remote birth access  
2 office had wanted any information, other than the  
3 existence of the EIC birth certificates, and the  
4 purpose of the EIC birth certificates, and the age  
5 limitation on the EIC birth certificates, they would  
6 have to reach out to an area representative for  
7 further information?

8 A. Correct.

9 Q. Yes?

10 A. Correct.

11 Q. Do you know how many e-mail responses  
12 Mr. Johnson received -- or any area representative  
13 received in response to this e-mail?

14 A. No.

15 Q. Do you have any basis to believe that there  
16 were any responsive e-mails asking for further  
17 information or guidance?

18 A. I'm not sure.

19 Q. Does your office track phone calls received  
20 from local registration offices at all?

21 A. No. We don't have a phone tracking system.

22 MR. FREEMAN: Okay. And I'm going to  
23 mark this as Exhibit 118.

24 (Exhibit Number 118 marked.)

25 Q. (BY MR. FREEMAN) What is this document?

1           A.    It is the memo from the -- pardon me --  
2    from the State Registrar regarding the election  
3    identification card and the remote system and the  
4    stamp that we provided to the local registrars.

5           Q.    And am I correct that the State Registrar  
6    wrote that, "The fees required to be paid pursuant to  
7    Health and Safety Code Sections 191.0045(e) and  
8    191.022(f), (\$2.00), are statutorily required, and as  
9    a result are not waived by this rule and must still  
10   be charged by the DSHS, local registrars, and county  
11   clerks"?

12          A.    Correct.

13          Q.    DSHS is the Austin office.  Correct?

14          A.    Correct.

15          Q.    And so this letter states that DSHS will  
16   still charge \$2.  Correct?

17          A.    Correct.

18          Q.    At what point was the policy changed such  
19   that the DSHS would no longer charge \$2 to  
20   individuals seeking EIC --

21          A.    We were -- our policy was that if we ever  
22   had anybody come in.  So at the beginning, it's been  
23   that way.  But we had this in there just -- since  
24   it's statutorily required, if we needed to begin  
25   taking the fee, then we would.

1 Q. So it's possible that at some point in the  
2 future your office may begin taking the \$2 fee?

3 A. It's possible, yes.

4 Q. Is there any technical impediment to  
5 connecting the birth certificate database that your  
6 office maintains, to the Department of Public Safety?

7 A. They're not able to access it. They  
8 don't...

9 Q. But would it be possible for the Department  
10 of Public Safety to access it?

11 A. Yeah, it would be possible.

12 Q. Is there any legal impediment that you're  
13 aware of?

14 A. Birth record information is close to -- is  
15 closed record information. We would have to -- so  
16 there would have to be some agreements made between  
17 Department of Public Safety and HHSC in regards to  
18 access to that.

19 Q. Okay. And if those agreements were in  
20 place, though, and if they had the necessary  
21 software, there wouldn't be any other impediment to  
22 connecting DPS to your birth records?

23 A. (Shakes head.)

24 Q. No?

25 A. No.

1 Q. Okay. Would that, then, allow individuals  
2 to go to DPS, even if they didn't have a birth  
3 certificate, and they could look up the birth record  
4 and they could get an EIC in one trip?

5 A. Yes.

6 (Exhibit Number 119 marked.)

7 Q. (BY MR. FREEMAN) I'm going to mark this  
8 document as Exhibit 119. Have you seen this document  
9 before?

10 A. No.

11 Q. Could you review this document? I'm only  
12 going to ask you questions about the first page.

13 What is this document?

14 A. It appears to be an e-mail from the  
15 Department of Public Safety.

16 Q. And do you know who Joe Peters is?

17 A. No.

18 Q. Do you know who Robert Bodisch is?

19 A. No.

20 Q. Am I correct that according to this e-mail,  
21 Mr. Peters -- well, does this e-mail provide  
22 Mr. Peters' title?

23 A. Yes.

24 Q. And what is Mr. Peters' title?

25 A. Assistant director.

1 Q. He's the assistant director for the  
2 driver's license division. Correct?

3 A. Yeah, Department of Public Safety driver's  
4 license division.

5 Q. Now, according to this e-mail, Mr. Peters  
6 met with DSHS officials regarding the possibility of  
7 providing them -- of them providing free birth  
8 certificates for EIC applicants. Correct?

9 A. Correct.

10 Q. Do you know who he met with?

11 A. No.

12 Q. According to this e-mail Mr. Peters also  
13 proposed a near-term e-mail solution and a  
14 longer-term solution that would involve their CSRs  
15 being able to directly query HHSC database for  
16 confirmation. Correct?

17 A. According to this, yes.

18 Q. Do you know who discussed that with  
19 Mr. Peters?

20 A. No.

21 Q. Do you know why that was never implemented?

22 A. No.

23 Q. But you agree that would be technically  
24 feasible. Correct?

25 A. Correct.

1 Q. Do you know who at your office would know  
2 who discussed this with Mr. Peters?

3 A. As far as I know -- just the chief  
4 operating officer, as far as I know.

5 Q. And who is the chief operating officer?

6 A. Ed House. I don't know of anybody else.

7 Q. Do you know of any other discussions that  
8 have ever occurred between DPS and your office,  
9 concerning establishing an online link between your  
10 records and DPS?

11 A. Not that I'm aware of.

12 Q. But at present, no such link exists.  
13 Correct?

14 A. No.

15 Q. And you have no knowledge of any plans to  
16 establish such a link?

17 A. Not at this time.

18 Q. Do you know what the costs would have been  
19 to establish such a link?

20 A. No.

21 Q. How much does it cost to connect a remote  
22 issuance site?

23 A. There's no cost to connect, but every  
24 record they issue, they actually issue, we'll charge  
25 them \$1.83 for that.



1 Q. And they're just using an ordinary computer  
2 with some kind of software on it. Is that correct?

3 A. There's no software. It's an  
4 Internet-based application.

5 Q. So it's a Web application?

6 A. Yes.

7 Q. So they take a normal computer, they open  
8 up a Web browser, And they -- do they have to verify  
9 who they are before they --

10 A. They have to log in -- they have a user ID  
11 and password so everybody who gets -- who logs into  
12 the remote system has a user ID and password. So  
13 they enter their user ID and password, and then if  
14 they have entered it successfully, they will have  
15 access to it.

16 Q. So in order to give DPS access to it, am I  
17 correct that the only thing you would need to do  
18 would be to reach an agreement and give them user  
19 names and passwords, DPS staff?

20 A. Yes. There may need to be some program  
21 changes. So if -- from my understanding of what this  
22 says, is they're just going to be verifying, so we  
23 would eliminate the use of having to print anything.  
24 So just a verification screen.

25 Q. It would just be a query?

VICTOR FARINELLI

5/9/2014

154

1 A. Yeah.

2 Q. And for a query, you don't even charge  
3 local offices. Correct?

4 A. We don't charge the locals, no.

5 Q. Has HHSC asked DPS for any information  
6 about EIC applicants who didn't have a birth  
7 certificate?

8 A. No, not that I'm aware of.

9 Q. Has HHSC reached out to any of those  
10 individuals?

11 A. Not that I'm aware of.

12 Q. Texas has a lot of immigration from other  
13 states within the U.S. Right?

14 A. Yes.

15 Q. Do you know about what proportion of the  
16 adult population in Texas was born in another state?

17 A. No, I don't.

18 MR. FREEMAN: Mark this exhibit as  
19 Exhibit 120.

20 (Exhibit Number 120 marked.)

21 Q. (BY MR. FREEMAN) Have you ever seen this  
22 document before?

23 A. No, sir.

24 Q. What does this document appear to be?

25 A. It appears to be from the Census Bureau.

1 Place of birth by nativity and citizenship status.  
2 Universal: Total population from 2008 to 2012, an  
3 American Community Survey Five-Year Estimate.

4 Q. What is the estimated -- according to the  
5 Census Bureau, what is the estimated native born  
6 population in Texas?

7 A. Native born, estimate total is 25  
8 million 200 and -- oh, native. Native. I'm sorry.

9 Q. That's born in state of residence.

10 A. Yes. I'm sorry. 21,109,883.

11 Q. That's -- am I correct, that's the total  
12 number who are native to the United States? Correct?  
13 I'm specifically asking the total number who are born  
14 in the state of residence of Texas.

15 A. Yes.

16 Q. What is that number?

17 A. Oh, 15,000 -- 15,248,259.

18 Q. Okay. And so that's a little less than 75  
19 percent, three quarters of the total native born  
20 population of Texas?

21 A. Yeah. Yes.

22 Q. And so among those -- the native born  
23 population, the population born in the United States  
24 in Texas, about 25 percent were born in other states.  
25 Right?

1 A. Yes.

2 Q. And this is the total population? This is  
3 not by age. Right?

4 A. It appears to be total population, yes.

5 Q. Is it possible to obtain a copy of a birth  
6 certificate from your office if an individual was  
7 born in another state in the United States?

8 A. Not from our office.

9 Q. Okay. Do you know how much it costs to  
10 obtain a birth certificate from the states that  
11 neighbor on Texas?

12 A. Not offhand. It varies.

13 Q. Do you know what the approximate range is  
14 for other states?

15 A. It's anywhere between 11 and 30.

16 Q. Okay. Do other states all allow  
17 individuals to apply for copies of birth certificates  
18 by mail?

19 A. To the best of my knowledge, yes.

20 Q. Okay. Are you aware of any problems  
21 related to Puerto Rican birth certificates?

22 A. No.

23 Q. And do you know how much it costs to obtain  
24 a U.S. Department of State certificate of birth for  
25 native born -- U.S. citizens born abroad?

1 A. No.

2 Q. Do you know if it's possible to obtain such  
3 a document without photo ID?

4 A. I'm not sure what their requirements are.

5 MR. FREEMAN: With that, I'm going to  
6 pass the witness to Mr. Doggett. I may have a few  
7 concluding questions at the end.

8 EXAMINATION

9 BY MR. DOGGETT:

10 Q. As usual, all the good questions have been  
11 asked, so I'm only left with a few clean-ups, which  
12 often don't even sound like questions. So I  
13 appreciate your patience.

14 If a person requests an EIC birth  
15 certificate and requests it on an expedited basis, is  
16 that fee waived?

17 A. If they come in office, it's going to be  
18 expedited, anyway.

19 Q. Why is that?

20 A. Because they're in -- in-house, so it's --  
21 we do it in realtime.

22 Q. On -- when you say expedited, that means  
23 just as soon as possible?

24 A. Right.

25 Q. Okay. So -- and the only way to get an

1 EIC, then, is to come in in person?

2 A. Correct.

3 Q. Okay. Just wanted to make sure I  
4 understood. There was some discussion about that.

5 On the exhibit --

6 MR. SCOTT: EIC birth certificate?

7 MR. DOGGETT: Yes. I'm sorry. Did I  
8 not say that? My apologies if I didn't. I'm sorry.

9 MR. SCOTT: I thought I just heard  
10 EIC. But that --

11 Q. (BY MR. DOGGETT) If I just say EIC, I'm  
12 more than likely meaning the EIC birth certificate.  
13 So if I leave that off, please feel free to correct  
14 me.

15 I'm looking at exhibit -- or what's  
16 been marked as 113. It looks like the application  
17 for the EIC birth certificate. Did you find that  
18 one?

19 A. 11 what?

20 Q. 113. 113.

21 A. There we go. Yes.

22 Q. At the top, it says, "Please print and  
23 include valid photo ID." Right?

24 A. Yes.

25 Q. And I think you already discussed why that

1 may not be applicable.

2 But underneath it, it says, full name  
3 of registrant?

4 A. Yes.

5 Q. Is the registrant the name of the person  
6 who you want the birth certificate for? Is that  
7 right? In other words, the person's name you want on  
8 the birth certificate?

9 A. The person -- the registrant is the person  
10 that's -- whose birth certificate it is for.

11 Q. Okay.

12 A. Yeah. It's their birth certificate.

13 Q. I'm with you, I think.

14 Underneath it has "Your name." Do you  
15 see that line underneath that -- those boxes?

16 A. Yes.

17 Q. And a slot for your name. Shouldn't that  
18 be the same in this case, because don't you have to  
19 be the registrant in order to obtain an EIC birth  
20 certificate, or not?

21 A. Yes. But you could be married and have  
22 changed your name. So your legal name may be your  
23 married name at that point, so -- sometimes it's  
24 going to vary a little bit.

25 Q. So someone may say, my name is now Jane

1 Smith, but the name on my birth certificate, I know,  
2 is different, and so they're going to put in the last  
3 one?

4 A. Right.

5 Q. Okay. I see what you're saying. And on  
6 the name of the father and then full maiden name of  
7 the mother, I believe you indicated earlier that when  
8 people get married, sometimes either -- either party,  
9 either sex changes their name as a result. Is that  
10 your understanding?

11 A. Yeah.

12 Q. I believe you testified to that, is the  
13 reason I'm asking.

14 A. Yeah. They have the option of changing  
15 their name, but that never changes anything on their  
16 birth certificate.

17 Q. Right. And so it could be, though, a male  
18 changes their name as a result of being married. Was  
19 that your testimony earlier?

20 A. Yes.

21 Q. Okay. The form talks about first name,  
22 middle name, maiden name for the mother. Do you  
23 follow that line?

24 A. Yes.

25 Q. But nothing for the father, for example.



1 A. Correct.

2 Q. Okay. And so --

3 A. It's generally our experience that not many  
4 males change their name to that of --

5 Q. Of someone else?

6 A. Right.

7 Q. I understand. Now, you're familiar with  
8 Hispanic-naming conventions. I believe it was talked  
9 about earlier.

10 A. Yes.

11 Q. Okay. And as far as this form is  
12 concerned, what is someone's last name, for example,  
13 if they have four names? They have a -- if you will,  
14 a beginning, a middle, and then they have the  
15 maternal, and then they have paternal. Which is --

16 A. It's going to be both of those names, is  
17 going to be their last name.

18 Q. And so they should fill both of those names  
19 in?

20 A. Yes.

21 Q. And should they put a hyphen in or not?

22 A. Some put -- it depends on what's on the  
23 birth certificate. Some, you can put a hyphen in  
24 there. Some don't. So it's whatever was put on the  
25 birth certificate at that time.

1 Q. So --

2 A. And that's up to the parent.

3 Q. So originally, when someone -- when a birth  
4 record is created, the last name, according to the  
5 database, is going to be both names that they put in.  
6 Is that right?

7 A. Correct.

8 Q. Okay. So the last name could actually be  
9 composed of two actual different words?

10 A. Yes. Or more.

11 Q. Or more. Okay. In order to request your  
12 birth certificate, you have to have some proof of who  
13 you are. Right?

14 A. Correct.

15 Q. And if you don't have that proof, in other  
16 words, your names don't match what's in the birth  
17 record, then when does your office decide that that's  
18 not enough proof for us in order to provide you a  
19 copy of the birth record? Do you understand what I'm  
20 saying?

21 A. Yes. We take that on a case-by-case basis,  
22 depending on if they're sending two supporting  
23 documents and both supporting documents, one -- all  
24 three don't match the birth certificate, and each  
25 supporting document don't match each other, we may

1 reject that.

2 If both supporting documents match  
3 and -- but it doesn't quite match the birth  
4 certificate, again, we'll let them know, something is  
5 wrong, what you've presented doesn't match what we  
6 have on file. You know, you're going to have to get  
7 it amended.

8 Q. And I believe you mentioned earlier that  
9 you would advise them to solve this problem, but if  
10 the registrant insisted, you would go ahead and  
11 provide it?

12 A. Yes.

13 Q. How do you do that by mail or online?

14 A. We call them.

15 Q. You call them?

16 A. Yeah.

17 Q. And if they don't have a phone?

18 A. We will send them a letter before we  
19 process it.

20 Q. So there would be a letter -- let's say  
21 they didn't have a phone or you couldn't reach them  
22 by phone -- saying, these records don't match, we  
23 would encourage you to fix these records, and then  
24 they would have to, then, write back again and say --

25 A. Respond.

1 Q. Right. And -- and say, I really want this.  
2 And that process could take a little time, I would  
3 presume?

4 A. They can call us, too. We have a toll-free  
5 number.

6 Q. I do, too. What's the wait time for your  
7 toll-free number? Is it longer or shorter than mine?

8 A. I believe the last time --

9 MR. SCOTT: Objection; speculation.  
10 Go ahead. I'm sorry. Go ahead. It looked like you  
11 were having fun.

12 THE WITNESS: I am.

13 MR. SCOTT: I know.

14 A. The last time I checked that we have -- for  
15 the call system, the last time I checked for the call  
16 wait time was three minutes.

17 MR. SCOTT: So does it beat yours or  
18 not?

19 MR. DOGGETT: I think that beats  
20 ours, yes, I would agree. Some days, anyway, for  
21 sure, calling Legal Aid.

22 Q. (BY MR. DOGGETT) Looking at document 116,  
23 it appears to be a print-off. I think you provided  
24 this.

25 And before we get there, just some

1 clarification because I'm sure I missed this and I  
2 apologize. Who can be a registrar?

3 A. A local registrar?

4 Q. Yes.

5 A. According to State law, Justice of the  
6 Peace is -- can be the local registrar for their  
7 precinct or a municipality over a certain population  
8 can be a local registrar.

9 If the Justice of the Peace have  
10 consolidated with the county clerk, so they have  
11 consolidated all their functions with the county  
12 clerk, the county clerk will be a local registrar.

13 Q. Are these appointed positions? Or how -- I  
14 mean, in other words, if an elected JP wants to be  
15 registrar, are they entitled to be a registrar?

16 A. Unless those functions have already been  
17 consolidated with the county clerk's office. And  
18 then at that point if they wanted to take it back on,  
19 it would be up to that commissioner's court of that  
20 county whether they were going to become a local  
21 registrar again.

22 Q. And so if you are a registrar, then you can  
23 then apply to have remote access. Is that right?

24 A. Correct.

25 Q. So you have to be a registrar, of course,

1 before you could even apply to be remote -- remote  
2 access?

3 A. Correct.

4 Q. Now, if you look on the second page of  
5 Exhibit 116, there's -- appears to me that these are  
6 buttons you can click on --

7 A. Correct.

8 Q. -- at the bottom, "Procedures for remote  
9 birth access offices," and then, "Procedures for  
10 offices not on remote access." Have you clicked on  
11 those buttons before?

12 A. Yes.

13 Q. What do they have you -- I mean, I can tell  
14 you what I think they have, but I'm not trying to  
15 test you. Are they generally instructions on how  
16 you --

17 A. How you would proceed, yes.

18 Q. Okay. And those instructions are for those  
19 people only, really? That's what they're designed  
20 for?

21 A. Right.

22 Q. They're not designed for the public. Is  
23 that right?

24 A. Correct.

25 Q. Okay. If you were to click on either one,

1 I can represent to you that I'm looking at it on my  
2 phone and I'm happy to share with you what I see on  
3 my phone. But I was going to tell you -- if I read  
4 to you a sentence and see if it would surprise you.  
5 How about that?

6 It says on number five, there's a list  
7 of things to do, details. One of them is, "Local  
8 registrar office collects the allowed fee, \$1.80 for  
9 Comptroller, 20 cents for local registrar office, and  
10 \$1 for preservation fee." Would that surprise you or  
11 would you agree with those instructions?

12 A. Can you repeat the instructions again?

13 Q. Yeah. In fact, if it's okay with your  
14 counsel, I'll give you my phone and let you see it.

15 MR. SCOTT: Sure. Exhibit 120?

16 A. \$1.80 fee -- yeah, that is correct. Okay.

17 Q. (BY MR. DOGGETT) And so when you were  
18 talking earlier about \$2 fees, really it's a  
19 composition of two different fees rolled together.  
20 Is that right?

21 A. The way the law is written, it says that  
22 the comp -- the local registrar shall charge \$2.  
23 \$1.80 goes to the Comptroller and the local registrar  
24 shall retain 20 cents. So we broke it down so they  
25 understood what they were supposed to retain and what

1 the Comptroller is supposed to get.

2 Q. So this is sort of -- if someone were to  
3 look at the EIC birth certificate instructions and  
4 they clicked on either one of these, it's going to  
5 tell them, this is what they are supposed to collect  
6 in order to provide an EIC birth certificate. Isn't  
7 that right?

8 A. Correct.

9 Q. Okay. And why is it that you can only get  
10 one in your lifetime?

11 A. Because we believe that it would be -- they  
12 can use that for -- to obtain an election card each  
13 time that election card expires.

14 Q. And so if they lose it or it's destroyed --

15 A. They would have to get a regular birth  
16 certificate.

17 Q. They would have to get a regular birth  
18 certificate. Are you aware of any communications  
19 that your offices had with the Secretary of State  
20 with regard to EIC birth certificates or EICs, in  
21 general?

22 A. Not that I'm aware of.

23 Q. What about DPS?

24 A. We may have, but I'm not privy to those.

25 Q. If there has been communications between



1 your office and these other State agencies, who would  
2 it have been?

3 A. It would have been with our executive  
4 officers.

5 Q. Which would be the --

6 A. Chief operating officer, possibly chief  
7 financial officer, if it had to do with money.

8 Q. Are you aware of any individual research  
9 that your department has done with regard to the  
10 individual plaintiffs in this lawsuit?

11 A. No.

12 MR. DOGGETT: I have nothing further.  
13 Pass the witness.

14 FURTHER EXAMINATION

15 BY MR. FREEMAN:

16 Q. I have one last question before the  
17 concluding questions, which is just something that  
18 was raised by what Mr. Doggett said. If a Justice of  
19 the Peace stops being a registrar, where do the  
20 records maintained by his office go, or her office?

21 A. They are transferred to whoever he  
22 consolidates with. So in this -- more than likely  
23 it's going to be the county clerk. He will  
24 consolidate with the county clerk.

25 Q. And if a Justice of the Peace's office had

1 not been a registrar previously, and becomes a  
2 registrar, do they --

3 A. They would be --

4 Q. -- do they have no records at the start,  
5 or -- and they just start collecting records, or do  
6 they get the records that cover the geographic  
7 territory that they are now taking over?

8 A. They would begin -- they begin collecting  
9 records as of the date they became local registrar.

10 Q. So a person would need to know not only  
11 what geographic area they were in, but whether, at  
12 the time that they were born, who was the registrar  
13 then. Correct?

14 A. Correct.

15 Q. At this point, do you have any answers that  
16 you wish to change?

17 A. Not that I'm aware of.

18 Q. Is there any information that you didn't  
19 recall previously that you now recall?

20 A. No, not that I know of.

21 Q. And is there anything you would like to add  
22 so that we can understand your answers more clearly?

23 A. No, not that I know of.

24 MR. FREEMAN: All right. Well, with  
25 that, I pass the witness.

VICTOR FARINELLI

5/9/2014

171

1 MR. SCOTT: The witness will read and  
2 sign, and you can forward it to us. We will reserve  
3 our questions until time of trial.

4 MR. FREEMAN: Thank you so much for  
5 your time, sir. I absolutely appreciate it.

6 (Deposition concluded at 1:42 p.m.)

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VICTOR FARINELLI

5/9/2014

172

1 CHANGES AND SIGNATURE

2 RE: VEASEY v. RICK PERRY

3 WITNESS: VICTOR FARINELLI

4 PAGE/LINE CHANGE REASON

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19 \_\_\_\_\_

20 I, VICTOR FARINELLI, have read the  
21 foregoing deposition and hereby affix my signature  
22 that same is true and correct, except as noted  
23 above.

24

25 \_\_\_\_\_  
VICTOR FARINELLI

VICTOR FARINELLI

5/9/2014

173

## REPORTER'S CERTIFICATE

STATE OF TEXAS )

COUNTY OF McLENNAN )

I, Melody Reneé Campbell, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the foregoing deposition is a full, true and correct transcript;

That VICTOR FARINELLI, the witness hereinbefore named, was duly sworn by the officer and that the oral deposition was taken by the officer in machine shorthand on MAY 9, 2014, and is a true record of the testimony given by the witness;

I further certify that the signature of the deponent was requested and is to be returned within 30 days from date of receipt of the transcript. If returned, the attached Changes and Signature Page contains any changes and the reasons therefor;

That \$ \_\_\_\_\_ is the deposition officer's charges for preparing the original deposition transcript and any copies of exhibits, charged to United States of America;

I further certify that I am neither counsel for, related to, nor employed by any of the parties in the action in which this proceeding was taken,


VICTOR FARINELLI

5/9/2014

174

1 and further that I am not financially or otherwise  
2 interested in the outcome of the action.

3 Subscribed and sworn to on this the 19th day of  
4 MAY 2014.

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6  
7   
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JOB NO. 4-AUSTIN-161365

VICTOR FARINELLI

5/9/2014

1

<b>A</b>	98:18,23 99:12	<b>advise</b> 163:9	63:7 138:22 139:11
<b>ability</b> 70:3 101:23	<b>accurate</b> 8:6 63:12	<b>Affair</b> 98:17	139:18
122:1,5,11	<b>accurately</b> 8:11 9:9	<b>affidavit</b> 37:9 93:11	<b>amendments</b> 52:23
<b>able</b> 9:8 41:5 67:1	9:15	<b>affix</b> 172:21	53:3 54:6,8,11
70:2 82:21 102:1	<b>action</b> 1:5 61:8,15	<b>afford</b> 22:16	55:12
118:17 124:5 149:7	125:3 173:25 174:2	<b>age</b> 47:19,22 48:19	<b>America</b> 1:18 2:2
151:15	<b>actions</b> 90:18,24	52:1 74:4,7 145:11	173:22
<b>above-styled</b> 1:19	<b>active</b> 62:10	147:4 156:3	<b>American</b> 4:9 155:3
<b>abroad</b> 29:12,19 30:2	<b>actual</b> 39:7 162:9	<b>agencies</b> 134:4 169:1	<b>amount</b> 54:8 110:21
30:6,14 62:12	<b>add</b> 7:25 92:16	<b>agency</b> 23:12 78:25	<b>analysis</b> 23:1,3,6,10
156:25	170:21	80:14 97:5	140:1
<b>absolutely</b> 62:23	<b>additional</b> 19:19 50:4	<b>ages</b> 48:5	<b>Anglo</b> 51:15 83:6
137:9 171:5	53:25 55:20,23 56:1	<b>ago</b> 12:24 15:14 25:7	<b>Anglos</b> 55:8
<b>abstract</b> 70:5,6,25	56:4,15,19,23,25	126:12	<b>annual</b> 125:20
71:7 89:22 91:13	70:14 75:13 77:3	<b>agree</b> 64:4,9,14 66:22	134:16 135:12
92:14,15 141:22	108:2 109:3 118:12	67:3,4 151:23	144:25
142:1 145:5,6,10	121:24 130:19,25	164:20 167:11	<b>answer</b> 6:1 7:19 8:6
<b>abstracted</b> 70:11	<b>address</b> 30:16 42:8,9	<b>agreed</b> 72:23 131:16	8:11,23 9:5,8,14
<b>abstracts</b> 89:16	45:3 58:9 60:4	<b>agreement</b> 19:15	13:13,14,17 15:16
<b>abuse</b> 107:19	70:17 105:22,25	45:7 153:18	63:17,19 64:1 73:23
<b>abused</b> 108:4,9	106:4,7,11	<b>agreements</b> 149:16	82:21 143:4
<b>accept</b> 37:9 77:19,20	<b>addresses</b> 57:7	149:19	<b>answering</b> 7:5 8:9
78:1,9 97:6 98:10	<b>addressing</b> 127:24	<b>AG's</b> 5:19	<b>answers</b> 6:3 55:13,14
98:11	<b>admin</b> 11:3,3 12:15	<b>ahead</b> 41:12 43:25	170:15,22
<b>acceptable</b> 37:17	<b>administering</b> 139:6	44:21 61:23 112:4	<b>Anthony</b> 5:7
71:18,18,20 98:2	<b>administration</b> 73:6	163:10 164:10,10	<b>Antonio</b> 121:2,4,12
<b>accepting</b> 37:8	74:11 97:6 99:4	<b>aid</b> 2:19 5:14 94:11	<b>anybody</b> 137:12
<b>access</b> 3:18,20 4:6	104:20	164:21	148:22 152:6
43:16 71:6,8 73:5	<b>administrative</b> 20:12	<b>al</b> 1:3,7	<b>anyway</b> 157:18
104:12 105:1 111:6	24:23 37:15,15 57:8	<b>Albert</b> 18:5	164:20
119:16,17,19,21	57:19 58:13,17	<b>alcoholic</b> 8:25	<b>apologies</b> 158:8
120:6,17 121:13,17	72:14 81:13,15,24	<b>Alert</b> 3:23	<b>apologize</b> 165:2
123:4,13,15 124:7	86:3 94:6 98:3	<b>alive</b> 34:25 36:3,5,6	<b>appear</b> 69:3 154:24
128:21 129:3 130:4	108:7	36:18 37:6 48:11,14	<b>appeared</b> 134:24
130:9,15,16,21	<b>administrator</b> 31:11	<b>allow</b> 63:13 150:1	<b>appears</b> 24:21 68:19
131:1,6,21 133:14	39:14,15	156:16	69:11 70:4 119:14
136:10 138:5,16	<b>adopted</b> 3:11 26:23	<b>allowed</b> 73:13 167:8	150:14 154:25
141:18 147:1 149:7	27:6,14,17 41:9	<b>allows</b> 63:7	156:4 164:23 166:5
149:10,18 153:15	58:5 59:21 91:19	<b>ambulance</b> 36:4	<b>applicable</b> 159:1
153:16 165:23	116:5	40:13,14	<b>applicant</b> 32:3 73:13
166:2,9,10	<b>adoption</b> 15:24 63:7	<b>amended</b> 53:15 97:23	85:7 98:25 101:11
<b>accidental</b> 106:24	90:10	163:7	101:12,14
<b>accidentally</b> 106:22	<b>adult</b> 154:16	<b>amendment</b> 51:23,24	<b>applicants</b> 151:8
<b>accidently</b> 34:21	<b>advance</b> 95:1	52:24 53:18,18,19	154:6
<b>accompanied</b> 94:16	<b>advent</b> 38:15	53:24 54:3,19 57:6	<b>applicant's</b> 98:23

VICTOR FARINELLI

5/9/2014

2

<b>application</b> 3:17 33:13 53:18 84:10 84:14 86:10 87:18 88:5,15,25 91:2,10 93:13,14 99:5 102:10,17,18,21 103:7,8,14,18 153:4 153:5 158:16 <b>applications</b> 88:11 90:6 <b>applies</b> 75:2 85:14 93:16 126:21 <b>apply</b> 64:7 74:4,17,20 77:15 87:10 101:8 101:15,23 103:4 108:5 132:3 156:17 165:23 166:1 <b>applying</b> 75:17 77:8 85:16,19 88:7 <b>appointed</b> 165:13 <b>appreciate</b> 42:22 141:9,9 157:13 171:5 <b>appreciated</b> 19:21 <b>approved</b> 27:1,2 69:19 <b>approximate</b> 156:13 <b>approximately</b> 11:22 37:25 51:7 83:4,9 115:4 119:23 135:6 <b>archdiocese</b> 50:2,3 <b>area</b> 43:25 47:7 82:19 147:6,12 170:11 <b>areas</b> 10:7 122:2 <b>Arlington</b> 124:4 <b>arrive</b> 22:24 <b>aside</b> 26:15 30:25 <b>asked</b> 7:24 112:24 113:16 142:5 154:5 157:11 <b>asking</b> 7:6 26:4 54:1 54:11 112:19 115:15 137:21 147:16 155:13	160:13 <b>asks</b> 103:4 113:23 138:5 <b>assess</b> 143:5 <b>assist</b> 29:10 30:9 41:3 48:21 <b>assistance</b> 30:19 34:3 <b>assistant</b> 150:25 151:1 <b>attached</b> 173:17 <b>Attachment</b> 4:8 <b>attended</b> 134:21 135:5,7 <b>attendees</b> 135:4 <b>attending</b> 39:23 <b>attention</b> 37:5 <b>attest</b> 87:2 <b>attested</b> 47:23 <b>attesting</b> 86:9 <b>attorney</b> 7:17,20 13:4 18:1 19:11 <b>attorneys</b> 15:11,13 <b>audit</b> 112:2 <b>audits</b> 129:19 <b>August</b> 25:16,20 57:24 <b>Austin</b> 1:23 2:10,15 2:20 52:16 71:2 79:9 82:10 84:4 85:15 87:14 91:4,15 101:15 102:12 112:23 113:19,24 116:25 125:21 129:4 130:21 131:1 131:18 133:3 137:5 137:21 148:13 174:9 <b>authenticate</b> 53:3 <b>authority</b> 53:2 62:3 67:7 105:7 <b>authorization</b> 94:24 <b>authorizes</b> 67:5 <b>automatic</b> 31:13 <b>automatically</b> 31:18 31:21 35:4 76:25	<b>availability</b> 29:24 131:8,17 134:11 136:7 <b>available</b> 29:5 30:22 34:3 45:4 87:14,17 87:18 89:12 112:13 113:12 114:6 116:7 128:19 132:8,14 136:4 140:15 <b>Avenue</b> 2:3 <b>avoid</b> 93:25 <b>aware</b> 34:10 38:22,24 43:9 47:10 51:8,12 56:9 59:22 62:13 68:14 80:3,5 87:16 92:10 96:5 103:23 103:24 108:17 109:3 112:2 113:18 116:4 127:17 128:16 131:25 132:1 149:13 152:11 154:8,11 156:20 168:18,22 169:8 170:17 <b>awareness</b> 54:17 <b>a.m</b> 1:20	139:25 142:25 143:19 <b>bases</b> 54:10 108:17 109:3 <b>basic</b> 44:4 92:8 <b>basically</b> 47:16 <b>basis</b> 58:22 110:5 114:7 139:22,25 142:2,3 147:15 157:15 162:21 <b>beat</b> 164:17 <b>beats</b> 164:19 <b>began</b> 67:12 <b>beginning</b> 60:3 148:22 161:14 <b>begins</b> 81:25 <b>behalf</b> 9:20 12:22 73:14 85:20 87:11 101:24 <b>believe</b> 23:16 24:7 47:5 57:5 59:3 65:24 66:9 67:14,23 73:15,20 79:22 85:9 90:9 94:5 96:25 106:21 108:6 119:6 119:7 133:10 138:22 139:23 144:13,14 147:15 160:7,12 161:8 163:8 164:8 168:11 <b>believes</b> 28:9,20 85:7 <b>believing</b> 58:22 <b>benefit</b> 63:5,6 <b>best</b> 6:20 8:18 16:9 32:13 42:20 46:16 46:24 69:9 70:3 83:3 86:4 93:5 103:2 106:17 108:7 115:4 120:15 141:2 143:7,10 156:19 <b>Bexar</b> 121:1 <b>beyond</b> 50:11 79:17 126:24 <b>bill</b> 21:11,13,18 23:1 23:2,11,12 139:25
---	--	--	---



VICTOR FARINELLI

5/9/2014

3

<b>binding</b> 45:19 <b>birth</b> 3:12,13,15,17 3:18,21 4:4,5,9 12:6 23:19 24:7,9 26:11 27:5 28:2 29:4,10 29:11,12 30:2,5,9 30:14 31:2,7,10,12 32:5,6,7,9 33:10,11 33:22,23,24 34:4,5 34:13,17,17 35:5,8 35:19 36:1 38:2,9 38:21 39:4,5,5,17 39:18,25 40:9,19,20 40:23,25 41:5,6,8 41:21,22,24 42:6,7 42:8,18,24 43:4,5 43:10,12,21 44:5,6 44:11,12 47:12,12 47:13,14 48:5,5,17 48:18,25 49:3,5,6 49:10,16 50:9,10,13 50:13,21 51:3,5,10 51:10,20 52:11 53:15 54:13,19,22 55:12,13,17 56:13 56:20 57:20 59:14 61:2,8,9 62:1,7,11 62:15,20,25 63:8,14 64:5,7,11,17,20,22 64:25 65:2,4,12,14 65:17 66:1,2,14,24 66:25 67:6,8,10,16 67:18,21,24 68:8,11 69:2,17,22,25 70:5 70:6,7,10,11,12,12 70:16,17,19 72:1,4 72:5,6,11,18 73:13 73:14,18 74:4,20 75:1,17,21 76:11 77:12,16 80:3,10 82:9 83:22 84:4,22 85:5,8,9,10,14,17 85:19,25 86:1,13,18 86:20,24 87:9,10,13 87:17,24 88:8,10	89:2,3,11,13 90:6 91:24 93:1,7,9,16 93:17,18 95:9,22 96:1,9,15,18,21 97:1,15,20 98:21 99:21 101:4,9,23 102:11,14,25 103:4 103:22 104:3,6,6,9 104:15,23 106:20 107:4,9 108:18 109:9,12,16 110:2,8 110:11,16 111:5,13 112:7,12,25 113:7 113:11,12,17,19,22 114:21 115:9,13,16 115:17,18,24,25 116:6,9,20 118:9,22 118:25 119:4,24 120:5 121:6 122:18 122:23 123:3,4,10 124:5 126:22 128:5 128:9,19,24 129:7 129:16,20 130:7,11 130:23 131:3,8,17 131:21 132:3,7,8,13 133:9,14,16 134:12 134:15 135:25 136:7,11,17,21 137:8,22,24 138:5,7 138:11,15 139:14 139:24 140:2,6,9,22 141:12,17 142:25 144:3 145:3 146:15 147:1,3,4,5 149:5 149:14,22 150:2,3 151:7 154:6 155:1 156:5,10,17,21,24 157:14 158:6,12,17 159:6,8,10,12,19 160:1,16 161:23,25 162:3,12,16,19,24 163:3 166:9 168:3,6 168:15,17,20 <b>births</b> 44:17 46:23 47:1 73:2,6	<b>bit</b> 49:22 66:9 84:12 90:1 114:5 159:24 <b>blast</b> 133:22 <b>blasts</b> 134:7 <b>Board</b> 20:16 <b>Bodisch</b> 4:7 150:18 <b>border</b> 95:3 <b>born</b> 29:18 30:10 31:5,9 32:7 34:25 35:1 36:3,5,9,12,14 36:17 37:6 38:1,8 38:13,14 39:6,20 40:3,14,16 46:7 47:15 86:21,22,23 87:6,7 116:23 117:3 123:12 124:1,2,4 154:16 155:5,7,9,13 155:19,22,23,24 156:7,25,25 170:12 <b>bothered</b> 96:20 <b>bottom</b> 69:3 166:8 <b>bounds</b> 15:13 <b>Box</b> 2:9,14 <b>boxes</b> 159:15 <b>Bray</b> 2:13 5:15,15 13:9 59:16 <b>Brazos</b> 174:9 <b>break</b> 6:23,25 19:8 46:25 54:25 73:25 143:14 <b>briefly</b> 14:25 136:1 <b>broke</b> 167:24 <b>broken</b> 35:15 <b>brother/sister</b> 86:5 <b>brought</b> 18:24 41:1 111:8 <b>browser</b> 153:8 <b>budget</b> 66:10 <b>Building</b> 1:23 <b>burdens</b> 67:2 <b>Bureau</b> 4:9 154:25 155:5 <b>bus</b> 79:24 <b>buses</b> 82:16 <b>business</b> 53:17,19	75:3 76:23 95:4 <b>buttons</b> 166:6,11 <b>B-1</b> 95:4 <b>B-2</b> 95:4 <hr/> <b>C</b> <hr/> <b>C</b> 2:1 59:4 <b>call</b> 163:14,15 164:4 164:15,15 <b>called</b> 36:5 51:24 <b>calling</b> 164:21 <b>calls</b> 147:19 <b>campaign</b> 131:11 <b>Campbell</b> 1:21 173:5 174:7 <b>capabilities</b> 45:4 <b>capability</b> 46:5 <b>capacity</b> 9:22 45:2 <b>card</b> 14:5 22:4,7,17 24:8 56:7 65:8,9,21 66:4 74:24 76:2 79:20 80:22 91:13 92:5 94:16,17,18,25 95:1,2,3,4,15 98:12 98:16,16,17,17,24 132:23 134:18 140:16,18 148:3 168:12,13 <b>cards</b> 4:8 90:4 <b>case</b> 6:4 21:3 142:6 159:18 <b>cases</b> 117:24 <b>case-by-case</b> 162:21 <b>categories</b> 12:7 <b>categorizes</b> 47:2 <b>cause</b> 1:19 49:19 <b>Census</b> 4:9 154:25 155:5 <b>center</b> 39:25 44:19 46:11 <b>cents</b> 167:9,24 <b>certain</b> 30:4 38:19 58:17 61:25 101:12 165:7 <b>certainly</b> 71:18 120:8
---	---	--	--

VICTOR FARINELLI

5/9/2014

4

<b>certificate</b> 3:4,12,13 3:15,17,18,21 22:1 22:8,13,18,21 23:18 23:25 24:7,9 27:5 29:10,11,12,18 30:2 30:5,9,14 31:2 32:9 33:10,23,24 34:4,13 35:5,8,19,22 39:4,7 40:19 41:6,7,8,21 42:18,24 43:4,6,10 44:5 47:12,12,13,14 48:5 49:5,6,10 50:21 53:15 54:13 54:19 55:12 57:20 59:24 61:2,8,9 62:1 62:21,25 63:8,14 64:5,7,12,17,20,22 64:25 65:3,4,17,23 66:1,2,15,24,25 67:6,10,16,25 68:9 68:12 69:25 70:8,10 70:16,19 72:1,4,6,6 73:13,14,18 74:5,20 75:2,17,21 76:11 77:12,16 80:4,10 82:9 83:22 84:5,22 85:6,8,10,15,17,20 86:13,18,20 87:9,11 87:13,17,24 88:8,10 89:2,3,11,14 90:7 91:24 93:2,8,9,16 93:17,18 95:22 96:2 96:9,15 97:1 98:13 98:21 99:6 101:7,9 101:24 102:11,15 102:25 103:5,22 104:3,6,9,23 107:9 108:18 109:13 110:17 111:5,13 112:13,25 113:12 113:17,19,22 114:21 115:9,13,16 115:17,18,24,25 116:6,10 118:9,17 118:22,25 119:4,24	120:5 121:6,7 122:19,23 123:3,4 123:10 124:6 126:22 130:7,23 131:3,9,17,21 132:4 132:8,8,13 137:8,22 138:6,7,11 140:6,9 144:3 145:1 146:10 149:5 150:3 154:7 156:6,10,24 157:15 158:6,12,17 159:6,8 159:10,12,20 160:1 160:16 161:23,25 162:12,24 163:4 168:3,6,16,18 173:1 <b>certificates</b> 4:4 49:3 51:3 55:13 62:15 65:12 67:8,21 69:2 72:12,18 101:4 106:20 107:5 109:9 109:16 110:2,8,11 112:7 113:7,11 128:19 129:8,16,21 130:11 133:9,16 134:12,15 135:25 136:7,12,17,22 137:24 138:15 139:15,24 140:2,22 141:13,17 143:1 145:3 146:15 147:3 147:4,5 151:8 156:17,21 168:20 <b>certification</b> 4:4 39:19 <b>certified</b> 26:11,12 27:4 28:2,3 29:4 33:15,19 49:8 50:20 53:22,23 55:17 65:3 67:17 70:10 72:11 74:20,21 75:21 76:10 82:8 86:20,24 88:22 92:3 98:21 104:5,15 107:9 115:24 126:22 130:22 133:15	140:6 173:5 <b>certify</b> 32:13 173:7 173:14,23 <b>chance</b> 34:21 <b>chances</b> 8:2 <b>change</b> 55:13,14 62:4 74:8 92:16,19,25 96:6 120:11 133:3,9 143:8 161:4 170:16 172:4 <b>changed</b> 24:23 38:8 38:11 62:1 89:5 148:18 159:22 <b>changes</b> 3:4 91:12 92:11,13,22 133:14 153:21 160:9,15,18 172:1 173:17,18 <b>changing</b> 114:5 160:14 <b>charge</b> 56:22 59:25 115:1,2,5 126:25 127:1 148:16,19 152:24 154:2,4 167:22 <b>charged</b> 57:7 58:10 58:25 59:19 148:10 173:22 <b>charges</b> 173:20 <b>check</b> 50:1 85:13 86:23 87:5,5 111:18 111:20,21 119:23 142:3,4 <b>checked</b> 142:7,9,10 142:13 164:14,15 <b>checks</b> 85:11 <b>checkup</b> 48:13 <b>chef</b> 11:24 <b>chief</b> 10:16 152:3,5 169:6,6 <b>child</b> 31:5,9 32:7 34:22,24 35:1 36:2 36:5,9,12,17 37:6 38:1 39:6,20 40:3,5 40:10,13,15,16,23 40:23 41:3,7,8 42:5	44:6,8 46:7 47:15 47:18,19,21 48:10 48:14,18,22 52:1 70:18 73:18 85:20 85:22 87:10 95:10 99:18,18,22 <b>children</b> 41:1 <b>child's</b> 31:12 33:10 42:6 48:24 87:9 <b>CHRISTI</b> 1:2 <b>church</b> 40:24 <b>circulated</b> 133:2 <b>circumstances</b> 34:16 34:20 62:5 65:17 84:13,18,19 <b>citizen</b> 29:18 95:2 99:19 <b>citizens</b> 156:25 <b>citizenship</b> 4:10 94:23 155:1 <b>city</b> 42:10 79:9 83:6 94:15 117:15 120:20,23 121:1,4 121:11 124:1 <b>Civil</b> 1:5,25 <b>claims</b> 62:17 <b>clarification</b> 165:1 <b>clarify</b> 25:24 42:23 55:4 <b>classification</b> 10:14 <b>Clay</b> 2:9 <b>clean-ups</b> 157:11 <b>clear</b> 6:18 12:10 13:11 17:12 35:11 40:12 69:8 <b>clearly</b> 170:22 <b>clerk</b> 12:14,14 33:1 123:21 165:10,12 165:12 169:23,24 <b>clerks</b> 4:3 15:25 148:11 <b>clerk's</b> 117:15 165:17 <b>click</b> 166:6,25 <b>clicked</b> 166:10 168:4 <b>close</b> 149:14
---	--	--	---

VICTOR FARINELLI

5/9/2014

5

<b>closed</b> 149:15	<b>comp</b> 167:22	149:5,22	123:10 126:22,22
<b>code</b> 2:14 24:23	<b>company</b> 98:22	<b>connection</b> 104:17,19	130:23 140:6
37:15,16 56:22 57:8	<b>complete</b> 6:15 11:4	129:3	142:22 144:20
57:19 58:12,13,19	33:13 36:22 49:14	<b>Connolly</b> 16:13	156:5 162:19
60:18 72:14 74:12	51:25 107:25	<b>considered</b> 35:17	<b>CORPUS</b> 1:2
81:13,15,24 86:3	121:15 129:22	<b>consolidate</b> 169:24	<b>correct</b> 17:16 18:18
94:6 98:4 108:8	<b>completed</b> 23:1 50:21	<b>consolidated</b> 165:10	22:5 26:8 27:24
145:9 148:7	<b>completely</b> 8:6 9:15	165:11,17	28:8,19 29:6 32:13
<b>coffee</b> 7:10,10,14	<b>comply</b> 134:19	<b>consolidates</b> 169:22	34:14,15 35:12,13
<b>collect</b> 43:7 168:5	<b>components</b> 29:6,9	<b>constantly</b> 45:8	37:6 39:21 40:17
<b>collecting</b> 170:5,8	30:6,8 58:8	<b>contact</b> 12:2 30:16,17	43:8 46:16 51:19
<b>collects</b> 167:8	<b>composed</b> 162:9	33:16 121:21	52:25 53:1 57:3,5
<b>college</b> 11:15	<b>composition</b> 167:19	<b>contain</b> 70:7	57:11 59:5 60:24,25
<b>column</b> 60:11,12	<b>compound</b> 55:22	<b>contains</b> 51:20 81:21	61:2,3,10,12,18
<b>combination</b> 85:16	<b>Comptroller</b> 59:11	82:3 173:18	62:21,23 63:1,2,6
<b>come</b> 12:16 41:24	66:9 167:9,23 168:1	<b>context</b> 108:5	71:19 74:21 75:22
73:24 83:23 84:6	<b>computer</b> 8:16 45:4	<b>continues</b> 108:24	77:10,11,13 78:21
125:18,23 131:5	114:4 153:1,7	<b>contract</b> 66:6,21	78:25 79:5 82:4
137:12,21 148:22	<b>concealed</b> 77:21 79:4	104:12,24,25 105:4	85:22,23 87:21,22
157:17 158:1	95:5	105:8,9,11,14,22,24	95:10,11,12 100:7
<b>comes</b> 59:23 84:4	<b>concerned</b> 161:12	106:3,6,10,13,14,17	100:10,11 103:1,2,5
103:3 115:13,15	<b>concerning</b> 16:8,20	107:1 108:16,16,19	103:15,16,20
116:22 124:14	19:16 28:17 112:12	108:22,25 109:4	104:18,21 111:6,9
<b>coming</b> 20:2 33:17	131:8 144:24 145:5	<b>contracted</b> 66:18	112:9,10,25 113:1,7
44:22 112:3 129:19	145:15 152:9	<b>contrary</b> 138:19	113:14,24 114:11
140:5	<b>concluded</b> 171:6	<b>control</b> 37:13 118:1,4	114:22 115:11,18
<b>comment</b> 28:15	<b>concluding</b> 157:7	118:6 122:1,5,11	116:21,25 117:1,5,6
63:22	169:17	129:15	117:8,9 120:1,3,4,7
<b>comments</b> 15:22 28:6	<b>conduct</b> 23:6,10	<b>Cont'd</b> 4:1	120:9,10,17 122:3,4
28:16 60:9 63:20	110:3,13,14 125:9	<b>conventions</b> 161:8	122:6,13 123:16,17
<b>commercial</b> 82:20	125:24	<b>conveyance</b> 40:6,11	124:7,8,20,23 126:1
<b>Commission</b> 1:11 2:8	<b>conducted</b> 43:18,21	<b>copies</b> 29:4 33:19	126:2 127:8,10
9:21 17:14 20:18	46:19 110:1,3 138:3	72:11 89:18 92:3	128:25 129:1,16,17
26:10 28:1	<b>conducts</b> 110:4	107:9,13,14 133:16	129:21 130:11
<b>commissioner</b> 26:9	<b>conference</b> 125:20	156:17 173:21	131:24 132:9,10
27:25 28:8 60:8	134:14,17 135:1,4,7	<b>copy</b> 26:12 27:4 28:3	136:8 137:9,18,22
<b>commissioner's</b>	135:12,13 144:25	31:19,21,25 32:24	137:23,25 138:1,7,8
165:19	<b>conferences</b> 125:16	32:25 33:9,15 49:8	138:12,13,17,25
<b>common</b> 86:16	126:3 136:2	50:20 53:23,23	139:7,12,13,16,17
<b>communications</b>	<b>confirm</b> 145:19	55:17 65:3 67:17	139:20,21 140:13
11:9 15:23 168:18	<b>confirmation</b> 151:16	70:10,14 71:12	142:20,21 147:8,10
168:25	<b>confused</b> 140:8	74:20,21 76:10 82:9	148:5,12,13,14,16
<b>communities</b> 122:12	<b>connect</b> 72:25 152:21	86:20,24 88:22	148:17 150:20
122:16	152:23	97:23 104:5,15	151:2,8,9,16,24,25
<b>Community</b> 155:3	<b>connecting</b> 143:12	107:17,19 108:2	152:13 153:2,17

VICTOR FARINELLI

5/9/2014

6

154:3 155:11,12 158:2,13 161:1 162:7,14 165:24 166:3,7,24 167:16 168:8 170:13,14 172:22 173:8 <b>corrected</b> 96:21 <b>correcting</b> 88:23 <b>correction</b> 52:7 94:19 <b>cost</b> 26:10 28:1,11,17 28:22 30:1 33:23 34:9 54:2 55:16 58:8 60:10 63:9,15 72:15 74:24 76:13 76:20 114:1,2,4,4 126:24 152:21,23 <b>costs</b> 28:7 55:20,23 56:1,4 66:22 113:23 115:9 152:18 156:9 156:23 <b>counsel</b> 5:16 8:15 12:25 13:5 14:7 16:10,11,15 17:25 22:22 72:23 143:15 167:14 173:23 <b>count</b> 106:24 107:2 108:1,10 <b>counties</b> 119:3,7,23 120:3 123:21 <b>county</b> 4:3 15:25 32:19 33:1 42:9 60:4 70:12 71:11 117:3,15 119:1,8,18 119:20 120:3,9,19 120:22 121:1 123:20,21,22,24,24 124:3 148:10 165:10,11,12,17,20 169:23,24 173:3 <b>county-wise</b> 119:6 <b>couple</b> 12:24 25:7 49:17 56:10 116:15 117:13,14 <b>course</b> 165:25 <b>court</b> 1:1 6:6 7:3 20:4	20:6 165:19 <b>cover</b> 170:6 <b>covered</b> 14:8 143:19 <b>covers</b> 34:9 <b>co-located</b> 122:19,23 130:17 <b>CRCB</b> 174:8 <b>create</b> 51:4,4 52:12 74:13 101:25 <b>created</b> 31:6,18,20,23 33:11 34:18 38:2,9 38:21 40:25 54:22 162:4 <b>creates</b> 41:10 <b>creating</b> 91:1 <b>creation</b> 32:5 39:5 48:18 51:10 52:11 67:5 <b>credit</b> 56:6 74:24 <b>Criminal</b> 94:19 95:16 95:19 <b>crossing</b> 95:4 <b>CRR</b> 174:7 <b>CSR</b> 1:21 <b>CSRs</b> 151:14 <b>current</b> 11:12 95:13 98:4 <b>currently</b> 18:16 19:11 43:4 76:8 80:7 <b>customers</b> 11:8 87:16 <b>cutting</b> 72:22  <hr/> <b>D</b> <hr/> <b>D</b> 3:1 <b>daily</b> 54:7 <b>Dallas</b> 116:23 117:15 120:22,23 <b>dance</b> 63:4 <b>Daniel</b> 1:23 2:2 5:8 <b>Daniel.Freeman@...</b> 2:5 <b>data</b> 46:16 73:1 142:2 <b>database</b> 43:12,21	46:5 68:10 71:6,8 73:9,11 84:10,15,21 85:4 86:23 87:5 91:11 92:12,15,23 104:12 108:23 114:6 141:20,25 149:5 151:15 162:5 <b>date</b> 12:23 19:16 27:10 34:13,25 36:8 36:9 41:9 42:6,7 44:6,12 48:25 50:9 50:13 61:21 62:2 70:12,13,13 85:9 139:10 142:18 143:1 170:9 173:16 <b>dated</b> 25:15 27:14 <b>day</b> 7:23 42:2 83:20 174:3 <b>days</b> 25:7 31:12 35:7 35:7,12,14 41:17,23 53:17,20 75:4,18 76:23 77:9 80:15 85:12 91:6 98:6,11 117:17,24 128:13 128:14,15 164:20 173:16 <b>DC</b> 2:4 <b>DD</b> 98:13 99:6 <b>deadline</b> 41:18 <b>deal</b> 127:23 <b>dealt</b> 46:15 <b>death</b> 145:10 <b>death/birth</b> 65:23 <b>decide</b> 120:16,17 129:7 162:17 <b>deduce</b> 96:10 <b>deduced</b> 101:13 <b>defendant</b> 21:4 <b>Defendants</b> 1:8 2:18 <b>define</b> 31:4 44:16 82:25 <b>defined</b> 86:4 <b>definitely</b> 26:16 <b>definition</b> 55:10 <b>degree</b> 28:10,20	<b>delay</b> 41:23 <b>delayed</b> 11:4 35:10 35:15,17,21,23 41:21 47:11,12,13 48:5,18 49:3,6,10 49:13,16 50:21 51:3 51:4,10,10 52:11 <b>demand</b> 139:23 <b>demographic</b> 38:19 <b>denied</b> 118:21 <b>department</b> 2:3,7,13 5:16 10:1,21 11:9 11:17 13:5 16:15,17 17:25 22:19 23:2,7 23:22 28:9,20 29:7 29:12,16 30:13 41:2 45:6 46:10 47:9 52:14 53:6 55:18 58:20 65:20 66:7 70:9 71:1 74:10 78:16,24 82:9 90:15 94:18,19,21,22 95:3 95:16,19,19 98:19 98:20,21 99:13 119:15 137:10,15 137:19 149:6,9,17 150:15 151:3 156:24 169:9 <b>depend</b> 89:14 <b>depending</b> 47:19 48:23 49:21 52:7 55:20 70:21 83:20 84:8,24 89:13 98:6 98:7 111:14 116:11 116:14 117:13 123:24 128:10 162:22 <b>depends</b> 36:2 37:8 47:20 127:3 161:22 <b>deployment</b> 62:12 <b>deponent</b> 173:15 <b>deposed</b> 5:23 <b>deposition</b> 1:10,16 5:21,25 6:14 14:2 14:24 15:10,21 16:4
--	--	---	--

VICTOR FARINELLI

5/9/2014

7

17:24 18:21 19:23 19:25 20:2 21:20 24:1 44:25 111:8 142:8 143:17 171:6 172:21 173:7,11,19 173:21 <b>deputy</b> 5:15 109:21 <b>Derek</b> 3:22 146:21 <b>derived</b> 141:4 <b>describe</b> 143:2 146:14 <b>described</b> 84:19 <b>Description</b> 3:8 4:2 <b>designate</b> 41:12 65:7 <b>designated</b> 31:10 39:10 40:19 41:7 <b>designation</b> 32:8 67:19 <b>designed</b> 141:21 166:19,22 <b>designee</b> 39:14,15 <b>desk</b> 11:7 88:19 <b>destroyed</b> 168:14 <b>detail</b> 146:14 <b>details</b> 167:7 <b>determine</b> 23:13 68:7 88:24 134:6 <b>determined</b> 23:14 <b>developed</b> 67:11 <b>developing</b> 67:12 <b>dies</b> 145:12 <b>differ</b> 65:6 67:17 113:18 <b>difference</b> 72:5 <b>differences</b> 48:15 <b>different</b> 33:21 54:15 54:16 65:3,13 68:12 97:4,4 126:15,16 127:24 145:25 160:2 162:9 167:19 <b>differentiate</b> 78:17 <b>difficult</b> 8:22 9:4 144:21 <b>difficulty</b> 99:25 <b>digital</b> 104:17 116:23	129:3 <b>digitized</b> 127:13,14 127:21 128:3,7 <b>direct</b> 29:16 131:13 <b>directly</b> 32:17 151:15 <b>director</b> 10:9,11,13 20:18 150:25 151:1 <b>discharged</b> 99:10 <b>discontinue</b> 105:11 <b>discontinued</b> 105:13 <b>discourage</b> 96:24 <b>discovered</b> 54:12 <b>discrepancy</b> 85:6 <b>discretion</b> 28:11,21 37:19 48:8 61:17,21 62:2 67:9 81:4,16 <b>discuss</b> 17:17 24:17 33:20 133:6 <b>discussed</b> 12:11 54:22 65:2 66:24 74:16,19 113:15 127:7 130:20 136:5 144:25 145:4 151:18 152:2 158:25 <b>discussing</b> 15:21,23 <b>discussion</b> 84:2 145:14 158:4 <b>discussions</b> 14:7 152:7 <b>disservice</b> 96:25 <b>distinct</b> 55:8 <b>distinction</b> 48:4 70:22 <b>distinctions</b> 51:9,13 55:5 <b>distribution</b> 133:23 <b>distributions</b> 54:18 <b>district</b> 1:1,1 35:2 36:13 123:13,19 <b>divided</b> 47:6 <b>division</b> 1:2 151:2,4 <b>DMV</b> 78:24 <b>DMVs</b> 79:18 <b>doctor</b> 20:15	<b>doctors</b> 12:6 <b>document</b> 8:10 13:24 14:1,2 24:6,18,19 24:20 25:2,15 26:21 26:22,24 32:16 36:3 36:9,10,13,16 37:17 47:25 52:2,8 63:19 64:3 65:7 68:18,24 69:7,18,20 70:3 71:16 73:16 80:13 81:1,19 87:8 89:14 90:19 94:4,10,24 97:8 101:2 102:9 106:19 108:23 119:13 126:11,15 126:16 128:1 143:25 144:11,21 144:23 146:7 147:25 150:8,8,11 150:13 154:22,24 157:3 162:25 164:22 <b>documentation</b> 24:10 34:24 <b>documents</b> 8:15,16 15:2 18:20,23 19:5 19:10,10 35:25 36:1 37:9,11 47:20,22 48:16,17,21,24 49:13,21,23,24 50:7 50:12 52:17 80:23 80:24 81:3,7,11,15 81:22 82:4 85:16 86:16 93:15,23 94:25 95:7 97:4 127:23 128:3 133:1 133:13 143:15,19 162:23,23 163:2 <b>Doggett</b> 2:19 3:3 5:13 5:13 13:9 157:6,9 158:7,11 164:19,22 167:17 169:12,18 <b>doing</b> 12:14 45:13 96:25 109:24 111:12,19 116:16	124:25 125:15 141:22 <b>dollar</b> 56:23 57:1 126:25 <b>dollars</b> 56:10 <b>door</b> 40:14,24 <b>DPS</b> 47:9 83:8,10 122:19,24 130:17 132:2 139:2,9 149:22 150:2 152:8 152:10 153:16,19 154:5 168:23 <b>drink</b> 8:25 <b>driver's</b> 22:17 64:18 75:25 80:15,21 81:2 89:23 94:14 95:25 96:1,20 97:9,16 151:2,3 <b>drops</b> 40:23 <b>drugs</b> 8:21 <b>DSHS</b> 134:4 148:10 148:13,15,19 151:6 <b>dual</b> 32:21 <b>Due</b> 139:1 <b>duly</b> 1:18 5:2 173:10 <b>duplicate</b> 102:17 <b>duty</b> 62:10 <hr/> <b>E</b> <hr/> <b>E</b> 2:1,1,13 3:1,8 4:1 <b>earlier</b> 7:24 22:3 39:9 47:11 160:7,19 161:9 163:8 167:18 <b>ease</b> 41:9 <b>easiest</b> 45:9 <b>Ed</b> 10:17,18,19 152:6 <b>educate</b> 132:6 <b>educational</b> 11:13 <b>effect</b> 58:6 60:2 69:1 90:25 91:17,19,21 139:3 <b>effective</b> 90:14,16,21 <b>effectively</b> 113:22 <b>effort</b> 132:6 <b>EIC</b> 3:12,13,23 23:25
---	---	--	--



VICTOR FARINELLI

5/9/2014

8

24:4 26:13 28:4,12 28:23 29:2 59:23 61:10 62:1,21,25 63:10 64:5,7,11,16 64:22 65:17 66:14 66:24 67:1,10,16,21 67:24 68:8,11 69:1 70:19 71:25 72:4,6 72:18 73:12,14,18 74:4 77:12 87:13,16 88:1,4,10 89:11 90:6 91:2,24 93:1,8 93:9,13,14,16,17 101:7,9 103:4,22 109:16 110:2,8 112:6,12 113:11,22 114:21 115:18,25 116:6 123:5 128:19 129:7,16,20 130:11 131:3,8,17 132:3,7 132:13,23 133:9 134:12,15 135:25 136:7,11,17,21 137:8,21,24 138:6,7 138:11,14 139:2,12 139:14,24 141:12 141:17 142:25 146:15 147:3,4,5 148:20 150:4 151:8 154:6 157:14 158:1 158:6,10,11,12,17 159:19 168:3,6,20 <b>EICs</b> 105:22 111:21 122:25 136:13 139:16 168:20 <b>eight</b> 9:1 11:12 76:16 126:1 <b>eighth</b> 111:24 <b>either</b> 33:12,17 54:14 76:4 87:5 117:2 160:8,8,9 166:25 168:4 <b>elected</b> 165:14 <b>election</b> 3:17,21 4:4 14:4 21:25 22:4,7	22:12,21 23:19,24 65:9,21,22 66:1,4 67:20 69:13 71:25 72:7 91:12 92:4,5 92:17,17 102:10,24 110:12 134:17 139:20 141:14,24 142:20 144:3,25 145:9 146:10 148:2 168:12,13 <b>elections</b> 90:15 <b>electronic</b> 9:25 10:4 10:6 11:6,8 14:4 32:12 65:8 134:17 <b>elements</b> 96:9 <b>eliminate</b> 61:8,18 153:23 <b>eliminating</b> 101:22 <b>employed</b> 173:24 <b>employee</b> 79:10,14 94:16 <b>employees</b> 16:25 17:1 53:2 106:7 135:10 135:17,18 <b>employment</b> 11:16 94:15,17,24 98:22 <b>EMT</b> 36:4 37:1 <b>en</b> 40:4,5 <b>encourage</b> 163:23 <b>enforcement</b> 94:15 109:23 124:17,21 <b>enforcing</b> 139:5 <b>enroll</b> 73:9 <b>enrollment</b> 90:3 <b>ensure</b> 49:6 90:13,20 99:14,14 138:4 <b>ensuring</b> 90:15 <b>entail</b> 107:10 <b>enter</b> 32:12 153:13 <b>entered</b> 153:14 <b>enters</b> 32:11 <b>entire</b> 121:4 <b>entities</b> 121:19 <b>entitled</b> 165:15 <b>entity</b> 121:8,9	<b>en-route</b> 40:20 <b>equivalent</b> 78:24 <b>error</b> 54:12,14 85:5 <b>errors</b> 51:20 <b>Esq</b> 2:2,8,9,13,19 <b>essentially</b> 6:5 15:15 22:9 124:18 <b>establish</b> 37:5 48:16 53:9 69:16,21 85:21 86:7,16 152:16,19 <b>establishing</b> 99:12 152:9 <b>estimate</b> 117:10 155:3,7 <b>estimated</b> 155:4,5 <b>et</b> 1:3,7 <b>evenings</b> 83:14 <b>events</b> 10:7 <b>everybody</b> 140:18 153:11 <b>evidence</b> 107:18 <b>exact</b> 12:23 27:10 <b>exactly</b> 70:1 90:22 107:23 110:21 141:6 142:14,18 <b>EXAMINATION</b> 3:2 5:3 157:8 169:14 <b>example</b> 47:7 50:1 51:14 73:17 78:5 86:12 97:5 120:9 160:25 161:12 <b>exception</b> 96:3 <b>excuse</b> 34:12 59:21 130:15 138:2 <b>executive</b> 26:9 27:24 28:8 60:8 169:3 <b>exercise</b> 28:10,10,21 <b>exhibit</b> 13:21,22 14:6 19:3 24:14,15 26:18 26:19 57:5 58:4 68:16,17 71:17,22 71:23,24 81:18 90:10 94:2,3 100:24 100:25 102:7,8 111:2,3,4 119:10,11	119:12 143:23 144:22 146:5 147:23,24 150:6,8 154:18,19,20 158:5 158:15 166:5 167:15 <b>exhibits</b> 94:1 173:21 <b>existence</b> 147:3 <b>existing</b> 29:1 <b>exists</b> 152:12 <b>expedite</b> 56:12,15 76:21 <b>expedited</b> 75:5,9 76:18 77:1 157:15 157:18,22 <b>experience</b> 38:12 97:3 161:3 <b>experienced</b> 92:2 <b>expired</b> 80:14,15,21 81:2 98:5,9 <b>expires</b> 168:13 <b>explain</b> 5:25 <b>explanation</b> 25:22,24 <b>extent</b> 15:17 16:20,21 17:18 45:1 107:23 141:10 <b>extra</b> 74:23 126:24 <b>e-mail</b> 3:22 4:7 133:5 133:8,23 134:3 146:11,17 147:11 147:13 150:14,20 150:21 151:5,12,13 <b>e-mails</b> 147:16
<b>F</b>			
<b>face</b> 87:3 <b>facility</b> 94:20 <b>fact</b> 69:22 86:9 87:2 102:24 140:21 145:25 167:13 <b>FactFinder</b> 4:9 <b>facts</b> 36:24 69:24 <b>fair</b> 15:16 44:14 <b>falls</b> 74:14 <b>false</b> 9:13			

VICTOR FARINELLI

5/9/2014

9

<b>familiar</b> 21:10,25 161:7	<b>fewer</b> 120:8 139:11	31:12 35:6,7,12,14 41:17 54:25 83:20	161:13
<b>families</b> 51:15,15 62:14	<b>field</b> 11:20 12:1,2,18 12:18 17:11 18:6,7 18:13,15 23:7 110:4 146:18,19,24	103:25 105:12 120:2,5 128:11 139:3 167:6	<b>fraud</b> 107:15
<b>family</b> 86:4 97:12	<b>fight</b> 45:23	<b>Five-Year</b> 155:3	<b>free</b> 4:7 22:18 66:1,2 66:12 92:5 93:9 137:9,25 151:7 158:13
<b>far</b> 24:5 45:22 120:8 134:15 152:3,4 161:11	<b>figure</b> 7:13	<b>fix</b> 163:23	<b>Freeman</b> 2:2 3:2 5:4 5:8,10,22 13:10,12 13:20,23 15:7 16:1 16:6 17:6 19:1,4,7,9 19:14,18,21,22 20:13 24:13,16 26:17,20 28:16 31:17 37:24,25 42:25 43:2,20 44:10 44:21 45:12,17 46:1 46:2 51:2 55:3 59:18 61:24 63:17 63:23 64:4 68:15,18 71:21,24 83:1,25 84:3 93:25 94:4 96:19 100:1,23 101:1 102:6,9 104:2 108:15 110:23,25 111:4 119:9,13 143:14,21,24 146:3 146:6 147:22,25 150:7 154:18,21 157:5 169:15 170:24 171:4
<b>Farinelli</b> 1:12,16 5:1 5:7,22 172:3,20,25 173:9	<b>file</b> 31:11,12 32:8 40:7 41:6,13 49:9 49:14,25 50:2 70:13 163:6	<b>floating</b> 7:12	
<b>fast</b> 75:7 76:22	<b>filed</b> 27:17 33:6 35:5 35:8,8,18 38:15 47:14 49:7 51:24 54:13	<b>follow</b> 106:12 124:22 160:23	
<b>father</b> 42:13 43:4 160:6,25	<b>filing</b> 12:14,15 31:8 33:7 41:25 48:24	<b>following</b> 39:5 109:25 129:10,11 129:14	
<b>fax</b> 2:5,11,21 133:20 133:21 174:10	<b>fill</b> 88:16 93:14 161:18	<b>follows</b> 5:2	
<b>feasible</b> 46:9 117:20 151:24	<b>final</b> 27:6 28:7 60:7,9	<b>follow-up</b> 143:18	
<b>features</b> 72:4,13	<b>financial</b> 115:12,22 116:1 130:10 169:7	<b>foregoing</b> 172:21 173:7	
<b>federal</b> 1:25 9:12 77:25 78:1,16,20 94:14,15	<b>financially</b> 174:1	<b>foreign</b> 98:17,19,24 99:11,16,20	
<b>fee</b> 27:4 29:1,1 33:14 49:12,14 50:18,18 50:23 53:22 54:4 56:6,8,9,15,17 57:1 58:11,18,24 59:1,4 59:5,6,8,12,13,19 60:5,23 61:1 62:16 64:21 65:1 66:8 75:13 76:22 114:9 114:19,19,23,23 126:25 127:2 137:17,20 148:25 149:2 157:16 167:8 167:10,16	<b>find</b> 7:13 38:12 39:1 49:7,7 51:17 73:25 90:2 107:18 117:21 158:17	<b>forget</b> 13:8	
<b>feedback</b> 21:7	<b>finding</b> 38:17 144:10	<b>form</b> 28:13 36:21 37:16 43:19 45:10 51:24 53:8 61:22 63:16 68:12 78:10 80:16 82:24 88:17 89:25 90:3 98:13,23 99:6,7,9,23 100:5 102:3 103:5,13,18 160:21 161:11	
<b>feel</b> 158:13	<b>fine</b> 7:17 26:7 31:17 42:22 45:17 78:21 115:8 141:7	<b>format</b> 19:16	
<b>fees</b> 50:19 56:19,23 57:7,10,12,19 58:25 60:14,16 61:4,9,18 61:25 62:6,20,24 66:6 148:6 167:18 167:19	<b>finish</b> 6:24 7:12,19	<b>formatted</b> 25:2	<b>Friday</b> 83:13
<b>female</b> 96:6	<b>finished</b> 7:6	<b>forms</b> 24:9 29:24 70:10 72:18 88:15 93:19 94:12,13 98:1 98:1 100:2,6 106:4	<b>Friedman</b> 96:20
	<b>Firm</b> 174:8	<b>Fort</b> 124:4	<b>front</b> 3:15 19:5,11 25:21 40:24 44:4 52:6 87:23 91:22 94:10 101:3 133:11 144:18
	<b>first</b> 5:2 7:19 12:21 24:17 25:11 27:9 40:10 46:8 49:4 60:11,12 68:2,23 88:19 101:1 139:3 142:12,16 143:21 150:12 160:21	<b>forth</b> 63:4	<b>frontline</b> 17:1
	<b>fiscal</b> 138:23,24,25 139:4	<b>forward</b> 41:6 44:25 55:6 171:2	<b>full</b> 6:15 62:6,19,24 68:3 159:2 160:6 173:7
	<b>Fischer</b> 97:15,16,17	<b>found</b> 65:25	<b>fully</b> 9:8
	<b>five</b> 11:20 17:17	<b>foundling</b> 40:22 41:7 41:13	<b>full-size</b> 89:18
		<b>four</b> 47:21,21,25 48:6 48:19 50:6,6,7 120:21 125:17,17	<b>full-sized</b> 70:14
			<b>fun</b> 164:11

VICTOR FARINELLI

5/9/2014

10

<b>function</b> 39:19 124:19 <b>functions</b> 124:11 165:11,16 <b>funding</b> 105:18 125:6 <b>funds</b> 114:5 <b>funeral</b> 12:5 20:17,18 <b>further</b> 103:21 145:14 147:7,16 169:12,14 173:14 173:23 174:1 <b>future</b> 143:9 149:2 <hr/> <b>G</b> <hr/> <b>G</b> 81:24 <b>gather</b> 38:6 42:11,13 <b>gathered</b> 42:4,16,17 <b>gathers</b> 32:11 <b>general</b> 5:16 6:2 13:4 13:5 16:10,11,15 17:25 106:16 107:12 110:4 132:12,15,20 141:14 144:8 168:21 <b>generally</b> 17:8 36:8 36:18 37:3,3,7 39:17 41:1 49:22 54:10 76:16 83:18 89:22 98:6 110:14 133:1,17 142:17 161:3 166:15 <b>General's</b> 18:2 <b>gentleman's</b> 13:8 <b>geographic</b> 170:6,11 <b>Geraldine</b> 4:3 10:9 14:22 17:23 133:19 <b>gesture</b> 6:8 <b>getting</b> 45:22 84:15 88:22 89:23 96:24 138:7 <b>give</b> 6:2 8:2 72:22 79:9 89:22 97:20,24 114:2 124:13 132:2 153:16,18 167:14	<b>given</b> 66:11 93:1 103:5 111:11,25 120:9 123:19 173:13 <b>gives</b> 40:23 <b>giving</b> 9:13 97:1 <b>go</b> 14:10,12 33:12 34:23 35:9,9,21 41:12 43:25 44:20 44:25 48:13 52:12 55:4 58:4 60:1,7 61:22 63:3 82:6 83:25 84:11 88:14 89:1,18 90:25 91:21 107:20 108:15 109:22 121:5,6 123:3,8 124:3,6 128:23 134:7 143:12 144:10,12 150:2 158:21 163:10 164:10,10 169:20 <b>goes</b> 32:17 88:18 107:11 110:4 138:5 141:22 167:23 <b>going</b> 9:11 13:16 14:9 15:12 24:16 33:20 37:10 40:9,21 44:12 45:18,23 47:18 48:2 48:10 54:14,24 55:6 59:24,24 63:18 67:2 68:2 70:24,25 71:8 72:24 73:19,24 77:9 79:21 91:17,17,19 91:21 94:2 97:6 107:15 111:11,24 112:9 117:2,4,5,7 119:11 120:16 123:5 124:5 127:11 129:12 140:24 143:5,21 145:20 146:1,3 147:22 150:7,12 153:22 157:5,17 159:24 160:2 161:16,17	162:5 163:6 165:20 167:3 168:4 169:23 <b>good</b> 7:14 89:22 143:3 157:10 <b>gotten</b> 68:8 <b>GovDelivery</b> 133:24 133:25 134:1 146:9 <b>government</b> 78:16 99:8 124:19,24 125:2 129:13 134:2 134:4 <b>governments</b> 118:7 127:22 139:5 <b>government-issued</b> 77:20,22 <b>Grande</b> 2:19 5:14 <b>grandparent</b> 86:6 <b>grandparents</b> 87:1 <b>great</b> 6:23 7:9,16,22 8:2,9 9:19 12:21 13:10,19 17:16,23 19:13 21:9,22 24:3 37:21 42:3 45:15 46:1 146:3 <b>group</b> 51:9 <b>groups</b> 38:20,23 <b>guidance</b> 147:17 <b>guide</b> 3:16 101:5 118:14 <b>guidelines</b> 100:21,22 126:17 136:6 <b>guys</b> 113:5 <hr/> <b>H</b> <hr/> <b>H</b> 3:8 4:1 82:2 <b>half</b> 83:9 <b>handbook</b> 100:14,19 126:10,14,18 <b>handed</b> 103:13 <b>handgun</b> 77:21 79:4 95:5 <b>handouts</b> 135:19 <b>happen</b> 91:5 125:4,5 142:6 <b>happened</b> 44:18	<b>happens</b> 7:24 67:24 <b>happy</b> 167:2 <b>hard</b> 7:3 100:20 <b>harder</b> 49:23 <b>Harris</b> 4:3 10:9 14:22 14:23 15:1 17:23 120:19 <b>Harris's</b> 133:19 <b>hats</b> 18:17 <b>head</b> 78:22 149:23 <b>heads-up</b> 92:9 <b>health</b> 1:11 2:7,13 5:16,19 9:20 10:1 10:21 11:18 13:6 16:16,17 17:13 18:1 23:2 26:9 27:25 29:7 34:8 41:3 44:19 45:5,6 46:10 46:11,13 47:4 52:15 53:6 55:18 56:22 58:12,18,20 60:17 66:7 70:9 71:1 74:10,11 82:10 94:19 119:15 137:10,15,19 148:7 <b>healthcare</b> 36:11 47:23 48:6 <b>heard</b> 158:9 <b>hearing</b> 20:6,7,8,9,15 107:20 <b>hearings</b> 20:12 21:6 <b>held</b> 11:10 32:24,25 95:8 <b>help</b> 8:10,11 11:7 95:9 <b>helps</b> 11:7 99:14 <b>hereinbefore</b> 173:9 <b>Hernandez</b> 16:13 <b>HHSC</b> 14:16 15:5 16:7,22 17:9,13 18:10,11 29:5,9 30:6,8 32:17 33:3 38:5 41:10 43:12,21 45:19 53:2 61:5,17 61:21 62:2,3 72:25
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VICTOR FARINELLI

5/9/2014

11

73:7 104:23 105:13 105:18 109:11,16 124:9 125:6,9 126:6 131:18 132:1 134:4 136:5 149:17 151:15 154:5,9 <b>HHSC's</b> 37:13 139:22 <b>high</b> 11:15 81:8 <b>Hispanic</b> 97:12 <b>Hispanics</b> 55:7 <b>Hispanic-naming</b> 161:8 <b>historically</b> 38:7,20 <b>hit</b> 84:15,20 <b>hits</b> 44:12 73:9,10 <b>hold</b> 14:9 <b>holder</b> 49:25 <b>holds</b> 128:24 <b>home</b> 34:22 35:25 38:14 39:21 47:18 48:4,17 <b>Homeland</b> 94:22 <b>homes</b> 12:5 <b>honestly</b> 69:6,6 <b>hoping</b> 69:8 <b>hospital</b> 31:9,10 39:10,14,15 40:1,4 40:5,6,7,13,15,16 41:2,12 70:17 <b>hot</b> 144:16,17 <b>hour</b> 54:24 <b>hours</b> 9:1 64:9 83:11 116:15 118:2 125:15 <b>house</b> 10:17,19 32:16 152:6 <b>Houston</b> 116:23 120:20 <b>huh-uh</b> 105:20 <b>Human</b> 1:11 2:7 5:20 9:20 17:13 26:9 27:25 45:5 58:20 <b>hyphen</b> 161:21,23	<b>I</b> <b>ID</b> 4:7 22:16 34:11,12 75:20,24 77:15 78:8 78:21,23 79:10 81:2 81:9 93:21 98:1 101:25 102:2 103:1 153:10,12,13 157:3 158:23 <b>idea</b> 39:3 140:24 <b>identifiable</b> 98:25 <b>identification</b> 3:17,21 14:4 21:16 22:1,4,8 22:12,17,21 23:20 23:24 33:14 53:9 65:8,9 69:13 72:8 76:2 77:21,23 78:4 78:7,11 80:17,18 91:12 92:18 93:20 94:12,13,14,16,17 94:18,20 95:2,15,21 95:21 96:10,14 97:2 98:2,4,5,8,22,25 100:3,5,6,8 102:11 102:19,22,25 103:9 103:11,15,19 110:12 134:18 141:24 144:4 145:1 146:10 148:3 <b>identified</b> 96:8 <b>identity</b> 85:21,21 <b>IDs</b> 78:14,19 79:8,14 80:2,6,9 <b>IH-35</b> 2:20 <b>imaged</b> 89:16 <b>immediate</b> 86:4 <b>immediately</b> 33:10 33:23 34:4 117:3 <b>immigration</b> 94:23 154:12 <b>immunization</b> 18:12 <b>impact</b> 23:12,14,17 <b>impediment</b> 149:4,12 149:21 <b>impediments</b> 143:11 <b>implement</b> 91:5	<b>implemented</b> 151:21 <b>implications</b> 139:4 <b>important</b> 7:2 9:14 <b>impose</b> 26:11 <b>incentive</b> 115:12,23 116:1 130:10 <b>include</b> 42:9 55:7 57:16 78:4 79:2,4 158:23 <b>included</b> 53:22 55:6 <b>includes</b> 113:9 <b>including</b> 114:3 <b>incorporate</b> 106:14 <b>incorrect</b> 73:20 96:24 97:1 <b>increase</b> 139:23 <b>Indian</b> 90:3 <b>indicated</b> 58:14 160:7 <b>individual</b> 9:21 17:1 18:5 24:10 30:5 50:5 59:13,23 61:25 63:14 64:5 65:1 66:23 67:22 68:8 73:12,16 74:17,19 75:2 76:10 82:8 84:3 85:14,25,25 86:11 87:4 88:7,14 93:1,6,15,20 96:11 97:11,25 99:20 100:2 101:8,23 103:3 104:5 107:5 107:13,15 108:1 112:24 113:16 116:22 123:2,9 126:21 130:22 131:2 133:6 136:14 137:2 138:4,10 156:6 169:8,10 <b>individuals</b> 10:23 11:2 29:10 30:9 38:13 43:14 49:22 52:20 53:17 54:18 58:17 61:9 62:20,24 64:10,14,16,17	65:11 74:4 86:21 95:9 96:5 101:25 102:1 112:12 132:2 132:7 133:11 135:6 139:1,11 140:5,9 148:20 150:1 154:10 156:17 <b>individual's</b> 86:12 95:20 96:13 <b>inform</b> 91:7 97:18,21 <b>information</b> 3:21 14:3 19:25 29:13,15 30:13,16,21 32:9,11 32:14 33:4 37:14 38:6,16 42:4,15,17 43:7,9 44:4 47:16 49:5,9 52:20 53:25 54:1 68:10 70:4,7 70:11,15,20 84:9,14 84:20 88:19 91:18 91:22 96:14,23 97:4 97:22 99:5 100:13 100:17 106:16,25 121:24 128:1 132:2 132:22,23 133:6,18 133:22,24 134:11 136:9 144:2 145:5,6 146:9 147:2,7,17 149:14,15 154:5 170:18 <b>informing</b> 136:6 <b>informs</b> 26:2 <b>insisted</b> 163:10 <b>inspecting</b> 125:15 <b>inspection</b> 110:10 <b>inspections</b> 109:23 110:1,3 124:16 <b>Inspector</b> 107:11 <b>instance</b> 1:17 128:12 <b>instances</b> 105:13 137:8 <b>institution</b> 94:20 <b>instruct</b> 13:14,16 63:19,25 74:6 129:9 <b>instructed</b> 64:3
---	--	--	--

VICTOR FARINELLI

5/9/2014

12

<b>instruction</b> 63:24 <b>instructions</b> 118:13 124:13 166:15,18 167:11,12 168:3 <b>insurance</b> 34:8 65:14 98:17 <b>interested</b> 174:2 <b>interface</b> 73:10 <b>interfacing</b> 88:7 <b>interim</b> 18:15 <b>Internet</b> 118:19 <b>Internet-based</b> 153:4 <b>interpretation</b> 63:22 <b>interrupting</b> 45:8 <b>intervene</b> 110:18 <b>introduce</b> 5:11 <b>intrusive</b> 44:24 <b>investigate</b> 107:8 108:24 <b>investigation</b> 107:10 107:21,24,25 <b>investigations</b> 107:15 <b>involve</b> 151:14 <b>involved</b> 50:19 <b>involvement</b> 21:3 <b>in-hospital</b> 32:6 <b>in-house</b> 43:15 88:12 157:20 <b>issuance</b> 3:16 55:12 70:13 71:6 73:1 91:12 100:14 102:15 103:17 104:3,7,9,23 105:10 108:18 110:17 111:13 112:15 113:12,20 115:2 118:10,23 119:1,4 119:24 122:19,23 124:14 126:13,14 133:15 152:22 <b>issue</b> 51:3 66:19 70:23,24,24 71:7,9 89:16 92:5,5 104:13 104:14 107:17,19 110:12 118:18	129:7,16 152:24,24 <b>issued</b> 31:3,4 39:4 66:20 68:12 69:10 69:12 70:4 72:2,12 72:19 76:4 78:2,4 78:15,23 79:14 80:13 92:14,15 94:24 95:15 98:18 99:12 105:6 107:13 108:21 136:13,15 136:16,22 137:4,6 137:25 138:15,16 139:14 141:13,15 141:18 142:5,13 143:1 <b>issues</b> 45:4 86:14 127:25 <b>issuing</b> 67:8 69:19 92:3 101:4 109:9,13 110:2,11 111:21 112:6,8 118:16 122:25 129:20 <b>I-35</b> 82:17 <b>I-94</b> 98:23	<b>keeping</b> 124:15 <b>kept</b> 88:11 <b>kind</b> 8:21 36:3,10,20 46:12 93:7 127:13 129:19 153:2 <b>kinds</b> 75:24 76:1 <b>knew</b> 91:16 <b>know</b> 6:23 7:24 8:7 8:13 10:15 15:6,7 15:15,16,17 16:2,12 16:22 17:10 20:1 24:5,20 25:12 27:2 34:2,7 38:5,7,19,25 39:8 42:1 44:17 45:9 47:8 52:10 53:12 58:1,3,5 69:4 69:7,10 72:16 74:3 81:10 82:22 83:5,7 91:4,7 92:4 96:18 100:12 103:10 112:12,20 115:7,8 116:6,13 117:18 118:16 119:3,22 121:9,18 122:18,22 123:18,25 124:1 127:18 128:12 129:19 130:14 131:7 132:11,13,19 132:21 134:10,21 135:9,19 136:11,19 136:21 137:4 138:9 138:14 139:22 141:7,12,16 142:6 142:10,15 143:5 147:11 150:16,18 151:10,18,21 152:1 152:1,3,4,6,7,18 154:15 156:9,13,23 157:2 160:1 163:4,6 164:13 170:10,20 170:23 <b>knowledge</b> 14:11 15:18 16:7,8,9,20 16:21 17:18 32:14 37:10 42:20 44:1	46:17,22,24 51:6 69:9,14 72:17,20 73:15 75:14 81:7 82:15 83:4 86:5 93:5,20 103:2 105:16,17 106:17 108:7 112:7 115:5 117:23 118:24 120:15 122:8,15 123:6 137:16 138:19 141:1,2,11 143:7,10 152:15 156:19 <b>knows</b> 14:16 15:5
<b>L</b>			
			<b>labor</b> 114:4,11 <b>lack</b> 101:25 <b>lacks</b> 93:21 <b>laid</b> 72:13 126:19 <b>language</b> 55:6 <b>large</b> 19:10 <b>largest</b> 120:3 <b>late</b> 55:12 <b>Latino</b> 51:14 <b>law</b> 31:23 34:22 35:9 35:11,15,18 39:13 48:22 67:5 69:23 94:15 109:18,22 165:5 167:21 <b>laws</b> 126:20 133:3,15 <b>lawsuit</b> 21:1 169:10 <b>lawyer</b> 13:15 46:2 <b>lay</b> 105:9 <b>lead</b> 12:17 <b>learn</b> 12:21 40:21 <b>leave</b> 18:10 158:13 <b>left</b> 13:7 157:11 <b>legal</b> 2:19 5:14 42:18 43:5 70:15 149:12 159:22 164:21 174:8 <b>legislation</b> 74:13 <b>legislative</b> 23:6,10 <b>Legislature</b> 61:7

VICTOR FARINELLI

5/9/2014

13

<b>length</b> 83:3 <b>letter</b> 54:1 81:8 133:19 148:15 163:18,20 <b>letting</b> 42:1 44:25 112:12 <b>let's</b> 26:2 40:22 86:11 94:1 96:18 97:14,15 99:16 103:25 104:2 123:8 143:12 144:22 163:20 <b>level</b> 69:21 91:3 <b>library</b> 79:20 <b>license</b> 22:17 75:25 80:15,21 81:2 89:23 94:14 95:6,6,25 96:1,16,20 97:9,16 151:2,4 <b>licenses</b> 64:18 79:5 <b>lie</b> 70:22 <b>lifespan</b> 107:14 <b>lifetime</b> 67:22 68:8 106:24 107:2 168:10 <b>limit</b> 24:17 <b>limitation</b> 17:20 74:3 78:13 147:5 <b>limited</b> 67:6 70:11 <b>limiting</b> 65:16 66:25 <b>line</b> 65:19,20 87:24 159:15 160:23 <b>lines</b> 22:4 92:20 <b>link</b> 144:13 152:9,12 152:16,19 <b>Linked</b> 4:5 <b>Lisa</b> 16:13 <b>list</b> 3:18,20 81:21 82:3 110:19 111:5 119:16,18 121:15 128:21 133:23 145:15 167:6 <b>listed</b> 81:11 121:14 <b>lists</b> 121:18 <b>LISTSERV</b> 134:3 146:9,12	<b>litigation</b> 5:9 58:1 <b>little</b> 8:20 49:22 63:9 63:14 84:12 90:1 92:16 98:10 155:18 159:24 164:2 <b>live</b> 29:12 30:2,5,14 <b>local</b> 4:3,4 12:5 15:24 29:8 32:19,25 33:4 33:6,7,12 34:23 37:8,12,17 43:15 47:18 48:8 52:19 56:21 57:2 58:10 69:11 71:5,11 73:1 79:8 81:4,16 100:18 100:18 104:11,25 109:15,20 111:15 111:15 114:15,18 114:22,23 115:15 115:16,19 116:11 116:17,22 118:7,11 118:15,22 119:8 121:6,16,21 123:8 123:10,14,18,22 124:3,10,18,24 125:2,6,10,18,21,22 126:7,10,23 127:3,7 127:12,14,22 128:20,23 129:13 129:18 130:3,5,9,15 130:21 131:1,5,23 132:25 133:20 134:7,19 135:10,15 135:17,18,23 136:22 138:15 139:4 144:4 145:7 147:20 148:4,10 154:3 165:3,6,8,12 165:20 167:7,9,22 167:23 170:9 <b>locals</b> 12:19 105:19 115:1,5,11,22 116:5 116:10 119:5 120:17 154:4 <b>located</b> 82:12 83:8 <b>location</b> 64:6	<b>locations</b> 64:10,16 109:12 119:25 120:12,20 121:10 122:2 125:17 <b>log</b> 153:10 <b>logs</b> 153:11 <b>long</b> 11:10 42:15 49:15 53:14 63:24 75:1 76:15 83:18 84:23 89:9,25 90:3 107:21 111:1 116:9 116:12 117:10,22 127:9 128:4,6,8 142:15 <b>longer</b> 18:7 42:24 43:10 71:17 84:12 90:1 128:11 148:19 164:7 <b>longer-term</b> 151:14 <b>long-form</b> 70:20 <b>look</b> 14:13 15:4,20 16:7 19:8 25:17 27:16 28:6 59:2 63:5 69:2 72:1 81:19 90:12 101:6 107:12 144:23 150:3 166:4 168:3 <b>looked</b> 42:21 164:10 <b>looking</b> 14:16 25:14 28:15 115:13 121:19 158:15 164:22 167:1 <b>looks</b> 107:16 158:16 <b>lose</b> 66:9 67:24 115:17 116:2 130:12,13 168:14 <b>losing</b> 66:5 <b>lost</b> 68:6 <b>lot</b> 40:21 44:12 154:12 <b>low</b> 139:1 <b>Lunch</b> 143:13 <hr/> <b>M</b> <hr/> <b>machine</b> 1:22 173:11	<b>maiden</b> 160:6,22 <b>mail</b> 2:14 33:17 52:17,18 56:2 76:11 77:9,13,16 78:19 80:4,7,10 85:17 130:20 140:19 156:18 163:13 <b>mail-ins</b> 77:19 <b>maintain</b> 29:20 <b>maintained</b> 169:20 <b>maintains</b> 149:6 <b>maintenance</b> 145:15 <b>major</b> 122:2 <b>majority</b> 84:7 <b>making</b> 6:11 40:25 46:15 55:15 94:1 <b>male</b> 96:6 160:17 <b>males</b> 161:4 <b>manage</b> 10:6 11:6 <b>manager</b> 9:25 10:4 11:19 12:20 18:6,7 18:13,15 <b>managers</b> 133:6 <b>mandatory</b> 126:3 129:25 <b>manual</b> 84:11 85:3 116:24 117:7 127:12 <b>mark</b> 1:3 13:20 16:13 19:2 24:13 26:17 68:15 71:21 119:11 143:22 146:4 147:23 150:7 154:18 <b>marked</b> 13:22 24:15 26:19 68:17 71:23 94:3 100:24,25 102:6,8 111:1,3 119:12 141:23,24 141:25 143:23 146:5 147:24 150:6 154:20 158:16 <b>marriage</b> 96:16 <b>married</b> 95:24,25 96:6,7 159:21,23
---	---	---	--

VICTOR FARINELLI

5/9/2014

14

160:8,18 <b>Martinez</b> 97:14,16 <b>mass</b> 82:14 <b>match</b> 95:22 97:2,19 97:22 116:24 162:16,24,25 163:2 163:3,5,22 <b>material</b> 92:7 <b>materials</b> 29:20 <b>maternal</b> 97:13 161:15 <b>matter</b> 28:11,22 75:16 77:8 <b>matters</b> 20:20,23 <b>maximum</b> 107:4,6 <b>McLENNAN</b> 173:3 <b>mean</b> 10:13 11:21 12:1 14:4 17:13 22:9 33:3 45:18 71:1 78:6 81:10 109:6 165:14 166:13 <b>meaning</b> 145:7 158:12 <b>means</b> 67:1 90:23 157:22 <b>media</b> 131:11 <b>Medicaid</b> 34:7 73:7,8 81:8 98:16 <b>medical</b> 20:16 36:3 36:16,19 37:1,4 95:5 98:17 <b>medical-related</b> 34:8 <b>Medicare</b> 98:16 <b>medication</b> 8:21 <b>meeting</b> 22:22 <b>meetings</b> 18:4 <b>Melody</b> 1:20 173:5 174:7 <b>member</b> 41:5 86:4 <b>members</b> 62:10 <b>memo</b> 4:3 148:1 <b>memory</b> 74:1 <b>memos</b> 133:19 <b>mentioned</b> 17:20	41:17 47:11 66:13 136:1 163:8 <b>mentioning</b> 39:9 <b>met</b> 151:6,10 <b>method</b> 1:22 <b>methods</b> 33:21 <b>Mexican</b> 98:24 <b>middle</b> 7:18 160:22 161:14 <b>midwife</b> 39:22 41:25 <b>midwife's</b> 39:23 <b>mile</b> 83:1,9 <b>military</b> 62:10,11 94:20 99:9 <b>million</b> 155:8 <b>mind</b> 55:10 <b>mine</b> 164:7 <b>minimal</b> 23:15,17 <b>minimum</b> 114:24 <b>minorities</b> 55:6 <b>minority</b> 122:12,16 <b>minus</b> 85:12 <b>minutes</b> 54:25 83:21 83:21 85:1 103:25 116:12,13 117:13 117:14 128:6,11 164:16 <b>misleading</b> 9:13 <b>missed</b> 165:1 <b>misspelling</b> 96:17 <b>mm-hmm</b> 109:5,6 <b>mobile</b> 122:25 <b>modern</b> 38:15 <b>moment</b> 5:11 15:14 27:22 72:22 126:12 <b>Monday</b> 83:13 <b>money</b> 64:15 113:23 114:1 115:16,18 116:2,2 130:12,13 169:7 <b>monitor</b> 112:11 <b>month</b> 51:7 141:16 <b>monthly</b> 79:24 142:2 142:3 <b>months</b> 11:12	<b>mother</b> 34:25 36:11 36:14,14 42:8,11 43:3 160:7,22 <b>mother's</b> 70:17 <b>Motor</b> 78:16 <b>move</b> 41:6 <b>moved</b> 12:17 <b>multiple</b> 85:13 97:11 117:17 121:10 123:5,25 145:20 <b>municipality</b> 33:2 165:7 <hr/> <b>N</b> <b>N</b> 2:1 3:1 <b>name</b> 5:5,8 13:8 32:10 42:1,5,5 44:6 44:7,8,9 48:25 49:1 50:8,9,12 54:15,16 70:11,17 85:7 95:21 95:22,25 96:7,8,18 97:13,14 133:19 159:2,5,7,14,17,22 159:22,23,25 160:1 160:6,6,9,15,18,21 160:22,22 161:4,12 161:17 162:4,8 <b>named</b> 173:10 <b>names</b> 32:10 50:10 50:14 70:12 97:12 153:19 161:13,16 161:18 162:5,16 <b>naming</b> 41:21 <b>native</b> 155:5,7,8,8,12 155:19,22 156:25 <b>nativity</b> 4:9 155:1 <b>near</b> 82:14,22,25 83:8 122:6,9 <b>near-term</b> 151:13 <b>necessary</b> 74:9 90:25 149:20 <b>need</b> 6:7,8,23 7:9,10 7:19 8:17 19:18 21:16 24:5,6,11 29:10 47:22 48:10	48:23,24 49:24 50:7 52:2,8 53:25 64:16 65:12 81:18 82:6 85:20 86:24 87:24 88:4,25 89:1,3 90:3 91:25 93:7,16 97:18 102:2,24 103:11 106:23 112:24 113:16 123:3 132:7 132:7 138:6 140:25 153:17,20 170:10 <b>needed</b> 47:25 52:10 87:25 89:13,24 90:2 91:5 92:12 93:21 140:9 148:24 <b>needing</b> 66:3 88:2 140:22 <b>needs</b> 31:22 52:24 107:25 <b>neighbor</b> 156:11 <b>neighboring</b> 30:23 <b>neither</b> 173:23 <b>never</b> 15:12 24:24 38:14 137:20 139:19 151:21 160:15 <b>new</b> 18:13 50:21 59:3 91:8,8,24 133:22 144:3 <b>newborns</b> 38:17 <b>nodded</b> 6:9 <b>Nods</b> 78:22 <b>noncitizens</b> 95:8 <b>nope</b> 19:20 143:10 <b>normal</b> 50:23 57:1 153:7 <b>North</b> 2:20 <b>notaries</b> 53:7,8 <b>notarize</b> 53:10 <b>notarized</b> 52:25 69:3 <b>notary</b> 52:6 53:4,5,12 <b>note</b> 138:23,25 <b>noted</b> 172:22 <b>notice</b> 1:24 3:9 44:24 59:18 60:22 90:10
---	--	---	---

VICTOR FARINELLI

5/9/2014

15

131:13,16,20,23 133:8 <b>notices</b> 105:25 112:16 133:5 <b>notification</b> 53:20 <b>notify</b> 96:23 <b>notwithstanding</b> 59:20 <b>November</b> 44:18 46:7 90:14 141:14 142:20 <b>number</b> 1:5 13:22 24:15 26:19 38:8 47:1 68:17 71:23 94:3 98:9 100:25 102:8 107:4,6 111:3 119:12 133:21 136:10,13,15,19 139:1 142:14,25 143:23 146:5 147:24 150:6 154:20 155:12,13 155:16 164:5,7 167:6 174:8 <b>numbered</b> 1:19 <b>numerous</b> 65:15 <b>Numident</b> 98:13 99:2 99:3 <b>nurse</b> 37:2 <b>NW</b> 2:3	66:14,24 67:22 76:10 80:3,10 82:8 86:1 93:8,17 96:1 104:5 107:5,7 108:2 116:9 123:9 130:22 131:2 156:5,10,23 157:2 159:19 168:12 <b>obtained</b> 64:21 <b>obtaining</b> 26:13 28:4 28:12,22 29:2 30:2 33:24 34:4,12,13 49:2 59:14 61:2 62:6 99:21 <b>obviously</b> 44:22 <b>occur</b> 34:17 91:14 92:12 <b>occurred</b> 104:15 116:20 134:14 152:8 <b>October</b> 27:15,19 58:7 67:15 68:25 90:16,19,20 135:24 141:13 <b>odd</b> 8:21 <b>offender</b> 95:15 <b>offender's</b> 94:17 <b>offer</b> 109:16 130:11 130:12 <b>offered</b> 43:24 136:11 137:9 <b>offering</b> 110:7 <b>offers</b> 121:9 <b>offhand</b> 38:4 51:6 56:9 62:8 72:16 109:2 135:11 141:16 156:12 <b>office</b> 2:9,14 3:15 4:5 5:19 13:4,5 16:10 16:11,14 18:2 20:11 25:18 27:17 30:17 30:22 32:15,25 33:13,16,17 34:23 39:16 51:3 56:20,21 57:2 59:23 66:19	71:2 82:10,12 83:11 84:4 87:14,20 91:4 91:15,22 100:17 101:3,15 102:12 103:4,10 104:14,20 106:1 107:11 109:15 112:23,23 113:19,23,24 114:1 114:8,22,23 116:11 117:12,14,16,21 118:8,21 121:8,22 122:24 123:11 126:23,24 128:20 128:24 131:2,4,6,6 131:6,18 133:2,11 136:15 137:5,16,21 138:5,17 145:8,10 146:20 147:2,19 148:13 149:2,6 152:1,8 156:6,8 157:17 162:17 165:17 167:8,9 169:1,20,20,25 <b>officer</b> 10:16 152:4,5 169:6,7 173:10,11 <b>officers</b> 169:4 <b>officer's</b> 173:20 <b>offices</b> 3:20 4:5 73:1 83:8 106:11 110:2,7 112:17 113:3,4 114:15,18 118:2,6 119:17 121:11,12 121:14 122:20 123:9,15 124:10 125:7,10 126:1,7 127:1 129:6 130:5 130:10,16,22 131:24 133:14 134:7 135:10 136:10,23 138:9,16 141:18 147:20 154:3 166:9,10 168:19 <b>officials</b> 151:6 <b>oh</b> 17:5 25:20 26:6	57:15 61:13 79:7 94:21 140:8 155:8 155:17 <b>okay</b> 6:11,14,18,22 7:1 10:8,15,23 11:10,13 12:10,21 12:25 13:10,19 14:6 15:12 16:3,6,22 17:3,12,16 19:1,7 20:23,25 21:9 22:6 22:11,24 23:9,13,16 23:21 24:13 25:3,6 25:8 26:2,24 27:14 28:18 30:4,19,25 31:22,25 32:4,17,23 33:8,20 34:11,16 35:24 36:7,16,23 37:3,12,19 38:19,25 39:3,9,20,25 40:8 40:12,18,21 41:14 42:19 43:12,17 44:10 45:17 46:18 47:11 48:1,3,12,15 50:4,11,17 51:8 52:23 53:14 54:10 54:21,24 55:15 56:12,25 57:14,15 57:18,22 58:4 59:13 60:7 61:1,7,16,20 62:5,5,19 64:25 65:11,16 66:17 67:5 67:10 69:6,15 70:6 71:4,10,14,16,21 73:12,24 74:2,16 75:10,16,20 76:6,25 78:19 79:14,17,20 79:24 80:2,6,16,20 80:23,25 81:6 82:22 83:5,8,11,18 84:23 86:19 87:10,13 88:10,14,21 89:5 90:5 92:11 93:6,15 94:10,21 95:12,20 97:25 99:11 100:1 100:12,15,23
<hr/> <b>O</b> <hr/>			
<b>oath</b> 9:12 <b>object</b> 44:21 <b>objection</b> 13:14 28:13 43:19,22 45:10,14,24 61:22 63:16 82:24 99:23 102:3 164:9 <b>objects</b> 13:12 <b>obtain</b> 24:4 29:14 30:9,17 33:9 39:7 49:15 55:17 57:1,20 61:10 62:11,15,21 62:25 63:9,14 64:11			

VICTOR FARINELLI

5/9/2014

16

103:21 104:4,22 105:7,16,18,21 107:16 108:9,12 109:1,15 111:23 112:2,5,16,22 114:25 115:8,11 117:2,19 118:1,8,12 118:21 119:9,22 120:2 121:18,23 122:1,22 123:2,14 123:23 124:2,18 125:1 126:6,15,21 127:1,20 128:12,19 129:24 130:1,14,19 133:1 135:17 136:5 137:1,7 138:21,24 141:5,7 142:6,25 143:20 144:15,20 145:17,23 146:23 147:1,22 149:19 150:1 155:18 156:9 156:16,20 157:25 158:3 159:11 160:5 160:21 161:2,11 162:8,11 166:18,25 167:13,16 168:9 <b>older</b> 49:22 50:6 74:7 98:8 <b>once</b> 33:6 50:20 65:25 67:12 72:1 91:20 <b>ones</b> 50:5 111:17 <b>online</b> 33:18 56:5 66:15,19 74:21 75:2 75:18,21 76:25 77:18 88:13 130:20 152:9 163:13 <b>on-site</b> 29:21 <b>oOo</b> 171:7 <b>Oops</b> 98:14 <b>open</b> 64:10 83:12 153:7 <b>opens</b> 40:14 <b>operating</b> 10:16 152:4,5 169:6	<b>opposed</b> 48:7 <b>option</b> 56:12 160:14 <b>optional</b> 126:4,5 <b>oral</b> 1:16 173:11 <b>order</b> 21:16 24:6 31:25 41:3 48:21 52:16 53:14 61:10 62:16 86:1 89:21 90:25 91:3 92:14 93:8,8,17,24 118:18 153:16 159:19 162:11,18 168:6 <b>ordinarily</b> 55:16 <b>ordinary</b> 32:4 65:3 67:17 74:21 75:21 153:1 <b>original</b> 29:4 31:6 71:12 89:25 121:7 128:24 139:25 173:20 <b>originally</b> 31:2 162:3 <b>Ortiz</b> 2:18 5:14 <b>outcome</b> 174:2 <b>output</b> 92:19 142:22 <b>outside</b> 44:23 45:1,10 86:21,23 <b>overnight</b> 75:11 <b>overnightened</b> 77:4 <b>oversee</b> 10:6 <hr/> <b>P</b> <hr/> <b>P</b> 2:1,1 <b>page</b> 3:1,8 4:2 27:18 28:7 60:10 63:5 90:12 101:6 139:8 144:14,19 150:12 166:4 173:17 <b>PAGE/LINE</b> 172:4 <b>paid</b> 28:2 60:17,24 66:13 148:6 <b>panel</b> 134:16,22,24 135:20,22 145:15 <b>panels</b> 134:25 135:1 135:3 145:20 146:1 <b>Panhandle</b> 47:7	<b>paper</b> 29:20 32:15 72:10,12,15 113:9 113:10 114:4,13 115:9 <b>paragraph</b> 60:11,13 <b>pardon</b> 148:1 <b>parent</b> 33:9 34:21 35:3 42:8 43:3 52:2 52:3,3,5,5 73:17 86:5,8 87:9,11 162:2 <b>parentage</b> 86:14,17 87:4,7 <b>parents</b> 31:18 32:1,3 32:10,10 37:4 39:6 39:21 41:20,23 42:6 42:7 44:9 49:1 50:8 50:10,14 51:25 52:3 52:3,4 54:16 70:12 70:16 87:6 <b>parent's</b> 44:8 <b>parole</b> 95:1 <b>part</b> 11:3 15:15 23:5 83:6 88:6 92:8 110:6,9 <b>partial</b> 65:1 <b>participate</b> 109:8 <b>particular</b> 24:24 25:2 26:22 44:3 55:11 60:1 94:7 106:4 108:17 109:12 <b>parties</b> 173:24 <b>partners</b> 132:24 144:9,13,18 <b>partner's</b> 96:7 <b>parts</b> 23:9 <b>party</b> 21:1 160:8 <b>pass</b> 79:25 157:6 169:13 170:25 <b>passport</b> 77:20 89:24 95:6 98:17,19,24 99:11,15,16,20 <b>password</b> 153:11,12 153:13 <b>passwords</b> 153:19	<b>paternal</b> 97:13 161:15 <b>paternity</b> 11:20,21 <b>patience</b> 157:13 <b>pay</b> 33:14 37:4 49:11 49:13 59:11 66:5,8 66:10,20 68:3 75:12 77:3 105:6 113:2 114:15,22,24 130:4 <b>paying</b> 105:4,4 108:20 <b>Peace</b> 33:1 165:6,9 169:19 <b>Peace's</b> 169:25 <b>penalties</b> 9:13 <b>pending</b> 6:24 7:18 <b>Pennsylvania</b> 2:3 <b>people</b> 38:8 51:9 73:9 91:4 96:19 102:24 112:20 116:6 134:21 136:7 140:22 160:8 166:19 <b>percent</b> 135:15 140:5 155:19,24 <b>percentage</b> 38:3 47:1 115:5 135:13 <b>perfect</b> 45:16 <b>perfectly</b> 15:16 <b>perform</b> 39:1,19 124:11,16 129:19 <b>permanent</b> 94:24 <b>permit</b> 77:21 94:25 <b>permitted</b> 62:11,15 <b>PERRY</b> 1:7 172:2 <b>person</b> 26:12 28:2 31:8 32:8 39:10 52:12 53:9 55:24 63:8 85:11,15,16,19 87:23,25 88:16,18 96:16 115:12,15,23 123:18 124:25 128:23 131:5 145:11 157:14 158:1 159:5,9,9
--	---	---	---



VICTOR FARINELLI

5/9/2014

17

<p>170:10  <b>personal</b> 37:9 43:23  44:1  <b>personally</b> 20:25  <b>personnel</b> 36:4,19  37:1  <b>person's</b> 39:11 159:7  <b>per-birth-certificate</b>  114:7  <b>Peters</b> 4:7 150:16,21  150:22,24 151:5,12  151:19 152:2  <b>phone</b> 96:19 147:19  147:21 163:17,21  163:22 167:2,3,14  <b>photo</b> 75:20,24 77:15  78:19,20 80:2 98:25  102:18,21 103:1,8,8  103:14,19 157:3  158:23  <b>photocopy</b> 89:18  <b>photographic</b> 77:22  <b>physically</b> 67:17  <b>physician</b> 36:4 37:1  <b>picture</b> 21:16 22:16  33:14 79:21,25  <b>pile</b> 19:4,10  <b>piles</b> 85:2  <b>pilot's</b> 95:6  <b>place</b> 4:9 25:11 40:9  42:7 50:9,13 60:3  67:14 91:10 116:19  121:5 136:2 138:4  139:20 149:20  155:1  <b>placed</b> 122:12  <b>places</b> 120:9 122:24  <b>plaintiff</b> 21:4  <b>plaintiffs</b> 1:4 5:14  169:10  <b>plans</b> 120:11 143:8  152:15  <b>please</b> 7:11 158:13,22  <b>pleasure</b> 95:4  <b>plus</b> 66:7,10 85:12</p>	<p>114:23 125:20  <b>point</b> 33:25 35:19  39:18,24 48:7 88:23  88:25 129:12  142:11 148:18  149:1 159:23  165:18 170:15  <b>policies</b> 136:4  <b>policy</b> 74:13,14 91:8  98:5 100:9,12  109:25 148:18,21  <b>polling</b> 120:9  <b>population</b> 154:16  155:2,6,20,23,23  156:2,4 165:7  <b>portal</b> 73:8  <b>portion</b> 43:5 70:15  132:24  <b>posed</b> 63:21  <b>position</b> 9:24 11:11  11:12 12:17 23:5  28:1,9 41:2  <b>positions</b> 11:1 12:12  165:13  <b>possibility</b> 151:6  <b>possible</b> 66:14 101:22  112:5 128:17,18  133:18 149:1,3,9,11  156:5 157:2,23  <b>possibly</b> 99:25 123:7  169:6  <b>Post</b> 2:9,14  <b>posted</b> 112:16 131:17  131:20,23  <b>potential</b> 88:15  <b>potentially</b> 99:21  <b>power</b> 109:19,24  124:17,21  <b>practical</b> 69:21 91:3  <b>practice</b> 60:1  <b>precinct</b> 165:7  <b>predecessor</b> 140:10  140:23  <b>predominantly</b> 83:6  122:12,16</p>	<p><b>pregnancy</b> 36:10  <b>pregnant</b> 35:1 36:12  <b>Prelaw</b> 140:11  <b>premise</b> 28:25  <b>preparation</b> 14:24  15:10 142:7  <b>prepare</b> 17:24 112:4  <b>prepared</b> 16:19  17:17 45:3 110:19  <b>preparing</b> 18:21  143:16 173:20  <b>present</b> 18:3 34:24  47:16 68:13 135:24  137:7,14,24 152:12  <b>presented</b> 163:5  <b>presenting</b> 97:3  <b>preservation</b> 56:24  115:3 126:25 127:2  167:10  <b>press</b> 131:7  <b>presume</b> 164:3  <b>pretty</b> 45:22  <b>prevent</b> 28:11,22  29:1  <b>previously</b> 142:11  170:1,19  <b>price</b> 1:23 131:9  132:9,14  <b>primary</b> 23:19 78:10  78:12 80:8 81:14,22  93:19 94:12,13 98:1  98:4 103:11  <b>print</b> 32:15 92:20  106:23,24,24 107:2  108:1,10 153:23  158:22  <b>printed</b> 72:9  <b>printout</b> 68:21 94:5  99:4 119:14 141:15  <b>print-off</b> 164:23  <b>prior</b> 8:5 11:19,24  15:23 22:21 23:5  91:18 119:10 142:9  145:19  <b>private</b> 98:22</p>	<p><b>privilege</b> 63:25  <b>privy</b> 168:24  <b>probably</b> 14:9 98:10  108:21  <b>problem</b> 163:9  <b>problems</b> 101:25  156:20  <b>procedure</b> 1:25 74:14  74:15 88:6 89:7  91:8 109:25 112:22  113:15 129:10,11  129:14  <b>procedures</b> 90:6  106:11,15 112:11  113:18 116:5 126:7  126:9 129:2 136:4  138:4 146:15 166:8  166:9  <b>proceed</b> 112:14  166:17  <b>proceeding</b> 173:25  <b>process</b> 11:4 16:25  32:4,20 35:10,22  49:2 51:19,22 75:3  89:8,12 110:10  112:15 118:16  142:12,16 163:19  164:2  <b>processed</b> 53:19,21  53:24 102:19,22  103:9,15,19  <b>processes</b> 109:20  <b>processing</b> 12:15  50:18 54:4 56:6  74:24 75:12  <b>processor</b> 88:24 89:2  <b>processors</b> 100:16  <b>produce</b> 19:15 26:12  28:3 46:5,6  <b>produced</b> 1:16 46:22  46:23  <b>product</b> 46:12  <b>production</b> 19:16  106:19 108:23  <b>productive</b> 41:4,4</p>
--	--	---	--

VICTOR FARINELLI

5/9/2014

18

<b>program</b> 12:16 23:8 34:8 73:8 98:21 105:10 143:2,6,8 153:20	132:12,15 138:11 144:7,8 149:6,10,17 150:15 151:3 166:22	153:25 154:2	143:3,4 164:1 166:19 167:18
<b>proof</b> 36:2,10,12,17 65:14 93:7 162:12 162:15,18	<b>publication</b> 26:25 27:1 139:10	<b>question</b> 6:1,4,20,24 7:4,6,11,18,23 13:13 15:15 17:7 27:22 45:13,14 52:11 86:10 87:4 90:22 96:12 107:17 169:16	<b>realtime</b> 157:21 <b>reason</b> 9:7 89:12 107:8 160:13 172:4 <b>reasonably</b> 28:10,21 96:10
<b>proper</b> 63:23,25 <b>proportion</b> 154:15 <b>proposal</b> 25:12 57:23 139:15	<b>publish</b> 24:22 46:14 <b>published</b> 27:7,11 <b>Puerto</b> 156:21 <b>pull</b> 84:10 117:21 128:4	<b>questions</b> 6:2,3 8:20 8:23 9:5,8,14,17 14:8 26:5 44:23 55:11 72:23 99:1 143:18 150:12 157:7,10,12 169:17 171:3	<b>reasons</b> 65:13,15 173:18 <b>recall</b> 12:23 170:19 170:19
<b>propose</b> 74:12,13 <b>proposed</b> 3:10 15:22 24:22,25 25:1,3,10 25:17,22 57:4,6 59:20 63:3 67:12 138:21 139:6,9,11 139:19 151:13	<b>purchase</b> 50:22 56:13 68:1 <b>purpose</b> 6:14 25:25 26:13 27:21 28:4 63:9 65:16 88:2,20 89:9 101:18,21 112:24 140:23 147:4	<b>quick</b> 48:1 <b>quickly</b> 108:16 117:8 127:6 <b>quite</b> 54:8 66:9 85:1 98:9 114:5 125:14 163:3 <b>quiz</b> 81:10	<b>receipt</b> 53:17 173:16 <b>received</b> 93:1 107:8 147:12,13,19 <b>recess</b> 55:2 104:1 143:13
<b>protect</b> 63:25 <b>prove</b> 34:24 36:5 <b>provide</b> 14:3 15:1 29:13 30:12,13,15 30:15 33:14 37:14 52:19 73:1,5 80:17 88:5,16 89:25 93:6 100:17 102:1,16 105:1,18 118:13 125:6 126:6 130:7 136:6 145:8,9 150:21 162:18 163:11 168:6	<b>purposes</b> 21:19 23:20 24:1 41:21,22 65:11 66:1,3 67:20 69:13 72:7 89:23 92:4,18 95:5 125:14 140:3,7 141:24 <b>pursuant</b> 1:24 60:17 148:6 <b>pursue</b> 129:12 <b>put</b> 25:11 26:15 30:25 57:15 60:3 65:22 67:13 84:9 105:25 119:21 136:2 160:2 161:21 161:22,23,24 162:5 <b>Putting</b> 91:10 <b>p.m</b> 1:20 171:6	<b>quite</b> 54:8 66:9 85:1 98:9 114:5 125:14 163:3 <b>quiz</b> 81:10	<b>recognize</b> 45:22 <b>recollection</b> 8:12 81:20 101:8 144:24 145:20 <b>record</b> 5:6,12 6:7,15 7:25 12:10 26:11 28:2 29:5 31:6,7,9 31:18,19,20,21,23 32:1,5 33:11 34:17 38:2,9,14,21 39:5 40:7,25 41:10,25 43:12,21 48:18 49:13,14,16 50:1,22 51:5,20 52:4,5,8,9 52:12 54:22 55:3,17 56:13,20 59:14 62:7 66:20 67:18 69:17 70:5,6 71:9 84:1,2 84:11 86:1,2,25 88:23 89:19 92:4,6 92:25 95:9 96:18,22 97:15,20,24 99:21 101:13 104:6 105:6 106:23 107:19 108:5,9,10,21 110:12 128:5,9,25 143:12 149:14,15 150:3 152:24 162:4 162:17,19 173:12
<b>provided</b> 23:3 59:4 59:19 60:22 64:25 84:14,20 91:16,18 91:21 92:8 132:1 144:2 148:4 164:23 <b>provider</b> 36:11 47:24 48:6	<b>qualified</b> 32:3 33:9 36:25 43:25 <b>qualify</b> 118:9 <b>quarter</b> 111:12 <b>quarters</b> 155:19 <b>queries</b> 43:17,20 44:3 <b>query</b> 118:19 151:15	<b>R</b> <b>R</b> 2:1 <b>race</b> 42:11,13 43:2,3 43:3 46:19,23 47:1 47:2 55:5,7,8 <b>racial</b> 38:23 51:8,12 54:18 <b>raised</b> 169:18 <b>range</b> 156:13 <b>rate</b> 68:3 <b>RDoggett@trla.org</b> 2:22 <b>reach</b> 147:6 153:18 163:21 <b>reached</b> 154:9 <b>read</b> 70:3 167:3 171:1 172:20 <b>reading</b> 134:7 <b>real</b> 48:1 108:15 <b>realize</b> 8:5,7 35:4 <b>realized</b> 52:10 <b>really</b> 8:17 101:20	
<b>providers</b> 12:3,5,8 125:23 <b>providing</b> 151:7,7 <b>provision</b> 59:3 94:7 <b>public</b> 22:19 34:3 47:9 63:5,6 65:21 65:25 78:24 122:6,9	<b>Q</b> <b>qualified</b> 32:3 33:9 36:25 43:25 <b>qualify</b> 118:9 <b>quarter</b> 111:12 <b>quarters</b> 155:19 <b>queries</b> 43:17,20 44:3 <b>query</b> 118:19 151:15		



VICTOR FARINELLI

5/9/2014

19

<b>records</b> 10:4 31:11 32:8 39:11 41:19 49:25 51:10,11 52:13 56:23 62:11 66:11 71:9 85:4 89:15 104:13 111:22 115:3 116:18 124:12,14 124:15 137:3 149:22 152:10 163:22,23 169:20 170:4,5,6,9	159:3,5,9,19 163:10 <b>registrar</b> 10:11 12:4 12:19 14:18,19,21 16:24 19:24 20:1 23:4 24:21 25:4 29:8 31:8,10 32:7 32:20 37:8,18 39:17 39:18 41:22,24 47:18 48:8 60:23 67:7,13 69:19 71:5 74:12 81:4,5,17 104:11,25 109:19 118:11 119:8 121:7 123:22 124:3 126:10 127:4 131:5 148:2,5 165:2,3,6,8 165:12,15,15,21,22 165:25 167:8,9,22 167:23 169:19 170:1,2,9,12	<b>registrations</b> 11:5 130:16 <b>registry</b> 11:21 67:13 <b>regular</b> 21:11 35:18 72:5 92:15 93:18 110:5 115:17,24 141:22 144:12 168:15,17 <b>regularly</b> 35:8 <b>regulation</b> 25:23 57:6 58:6,9 60:4 61:4,16 61:24 63:3,13 64:21 65:2 81:12,21 <b>regulations</b> 124:22 133:4,15 141:9 <b>regulatory</b> 74:8 139:18 <b>reject</b> 163:1 <b>relate</b> 20:13 <b>related</b> 41:18 67:2 73:12 90:6 101:24 156:21 173:24 <b>relating</b> 146:15 <b>relationship</b> 22:12,15 85:24 86:7 96:13 104:22 124:9 <b>relative</b> 33:9 101:10 <b>relatively</b> 117:8 <b>relatives</b> 39:7 <b>relative's</b> 101:24 <b>release</b> 98:13 99:6 <b>releases</b> 131:8 <b>relevant</b> 45:21 82:4 <b>religious</b> 41:22 <b>relying</b> 111:1 <b>remember</b> 7:22 8:11 <b>remind</b> 9:11 <b>remote</b> 3:15,18,20 4:5 43:16 56:20 68:19 69:12 70:23 71:5,8,11 73:3 101:3,4 102:14 103:17 104:3,6,9,23 105:9 106:18 108:18 109:10,11	109:12 110:16 111:5,13,17,18,19 111:20 113:12,19 118:9,22,25 119:4 119:16,17,19,21,24 120:5 122:18,22 123:3,13,15 124:7 126:13,14,23 127:4 128:21 129:3,6 130:3,9,14,16,21 131:1,6,20 133:14 136:10,14,20 138:2 138:5 141:18,23 147:1 148:3 152:21 153:12 165:23 166:1,1,8,10 <b>remove</b> 106:23 <b>removed</b> 23:18 40:6 40:10 <b>Reneé</b> 1:20 173:5 <b>RENEÉ</b> 174:7 <b>rep</b> 12:18 <b>repeat</b> 62:22 167:12 <b>rephrase</b> 90:24 <b>report</b> 10:8,23 44:16 46:6,7,13,14,18,24 46:25 <b>reported</b> 1:22 <b>reporter</b> 6:6 7:4 173:6 <b>REPORTER'S</b> 3:4 173:1 <b>reports</b> 10:15,16 44:15 46:5,21 139:10 <b>repository</b> 128:1 <b>represent</b> 5:8 12:4 22:6 167:1 <b>representative</b> 45:2 97:14 147:6,12 <b>representatives</b> 146:25 <b>represented</b> 12:25 <b>representing</b> 5:19 12:18 13:3
---	--	--	--

VICTOR FARINELLI

5/9/2014

20

<b>request</b> 19:19 31:22 32:1 33:19 49:4 51:23 52:24 54:19 55:21,24 73:13,16 73:17 118:22 140:5 162:11 <b>requested</b> 56:20 139:2,12 140:2 173:15 <b>requesting</b> 14:3 51:9 140:6 <b>requests</b> 11:4,21 12:15 16:25 51:7 53:3 54:5 56:1,4 59:23 61:25 65:1 157:14,15 <b>require</b> 36:19 47:20 53:8 61:9 62:20,25 123:5 <b>required</b> 26:12 28:3 31:11,13,23 34:23 35:23 37:5 48:7,16 48:17 53:16 59:10 60:17,19 66:20 81:23 84:16 93:6 99:22 112:17 136:25 145:9 148:6 148:8,24 <b>requirement</b> 41:16 41:17 50:12 <b>requirements</b> 24:4 33:8 34:11 50:5 53:13 91:9 100:20 103:21 134:19 157:4 <b>requires</b> 21:15 35:9 35:11 36:18 75:20 77:15 <b>requiring</b> 138:10 <b>research</b> 169:8 <b>reserve</b> 45:14,24 171:2 <b>residence</b> 42:10 155:9,14 <b>resident</b> 36:14 94:25	<b>residential</b> 82:20 <b>resolved</b> 21:6,8 <b>respond</b> 7:7 53:16 163:25 <b>response</b> 28:7,17 90:13 147:13 <b>responses</b> 60:8,9 147:11 <b>responsibilities</b> 10:3 <b>responsibility</b> 39:21 39:23 41:24 <b>responsible</b> 31:8 40:3 40:24 41:25 <b>responsive</b> 147:16 <b>restate</b> 6:20 <b>restaurants</b> 11:25 <b>result</b> 139:5 148:9 160:9,18 <b>retain</b> 167:24,25 <b>retrieve</b> 128:8 <b>return</b> 57:4 <b>returned</b> 75:11 173:15,17 <b>returning</b> 26:16 <b>revenue</b> 66:10 <b>reversed</b> 61:20 <b>review</b> 18:20,23 19:9 23:11 25:22 26:4 27:20,21 93:23 150:11 <b>reviewed</b> 18:25 126:12 143:16 <b>Rican</b> 156:21 <b>RICK</b> 1:7 172:2 <b>right</b> 25:11 28:18 30:6 44:23 51:19 75:18 79:18,19 82:6 82:17 83:22,24 101:18 112:17 113:3,13 114:10 115:25 116:3,21 120:18 121:16 123:8 131:18 140:19 144:8,9 154:13 155:25	156:3 157:24 158:23 159:7 160:4 160:17 161:6 162:6 162:13 164:1 165:23 166:21,23 167:20 168:7 170:24 <b>Rio</b> 2:19 5:14 <b>Rivera</b> 18:5 <b>RMR</b> 174:7 <b>Robert</b> 2:19 4:7 5:13 150:18 <b>role</b> 32:19 39:12 <b>roles</b> 145:12 <b>rolled</b> 167:19 <b>Rough</b> 117:10 <b>roughly</b> 84:25 110:16 110:23 111:23 119:6 127:18 135:14 <b>route</b> 40:4,5 <b>routinely</b> 46:23 <b>rule</b> 15:22,24 20:17 20:19 24:25 25:1,3 25:17 27:3,6,14,17 45:11 57:4,16,17,22 58:2,5,17 59:21 60:20 62:4 69:1 90:10,14,15,20,25 91:1,5,5,9 95:18 98:14 101:19 139:9 140:14 148:9 <b>rulemaking</b> 62:3 <b>rules</b> 1:25 3:10,11 24:22,23 25:11 26:23 27:1 48:9,23 63:22 67:13 74:13 79:22 80:1 91:17,19 126:19 136:2 140:10	60:17 65:21 74:11 78:24 148:7 149:6 149:10,17 150:15 151:3 <b>sample</b> 3:13 71:25 <b>San</b> 121:2,4,12 <b>saw</b> 23:21 <b>saying</b> 45:10 55:5 67:20 160:5 162:20 163:22 <b>says</b> 39:14 60:11 72:7 87:24 90:13 95:18 102:23 109:22 115:2 153:22 158:22 159:2 167:6 167:21 <b>SB</b> 21:18,23 22:7,13 23:9,21 58:1 93:21 139:20 140:1,12,23 140:25 <b>schedule</b> 58:24 <b>school</b> 11:15 52:8 65:14 78:6 81:9 89:23 <b>schools</b> 78:17,18,18 <b>scope</b> 45:1,11 <b>Scott</b> 2:8 5:18,18 13:7 15:6,14 16:1,5 17:4 18:24 19:2,6 19:14,17,20 20:11 28:13 31:15 37:22 42:23 43:19,22 44:20 45:15,25 50:25 61:22 63:16 63:18 64:2 82:24 99:23 102:3 108:13 110:18 158:6,9 164:9,13,17 167:15 171:1 <b>screen</b> 68:19 69:12 70:1 153:24 <b>scrubbing</b> 46:15 <b>seal</b> 69:5 <b>search</b> 44:7,8,11 49:4 49:11 50:17 58:11
	<hr/> <b>S</b> <hr/>		
	<b>S</b> 2:1 3:8 4:1 <b>Safety</b> 22:19 47:9 56:22 58:12,18		

VICTOR FARINELLI

5/9/2014

21

58:18 84:9,11,15,23 84:25 85:3 116:14 116:16,25 117:4,7 127:7,12 142:23 <b>searchable</b> 43:13 <b>searches</b> 84:24 85:1 <b>searching</b> 85:11 106:19 108:22 116:18 <b>second</b> 28:19 44:20 60:10 63:5 84:1 90:12 98:14 166:4 <b>secondary</b> 78:9 80:9 80:16,19 81:1,2,14 81:22 98:2 100:3,5 103:12 <b>Secretary</b> 25:19 27:18 57:23 122:24 145:8,10 168:19 <b>section</b> 25:25 27:21 57:7,17,18 60:18 92:17 132:12,15 139:3,6 144:7,16,17 <b>Sections</b> 148:7 <b>secure</b> 124:15 <b>securing</b> 63:10 <b>security</b> 24:7 56:24 72:9,12,13,15 73:6 80:22 94:22 97:6 98:12 99:3 104:20 113:9,10 114:13 115:9 124:15 <b>see</b> 6:25 18:16 23:12 25:3,6,18 27:6,9 43:24 60:10,16 70:1 73:25 81:20 87:6 107:14 110:1 111:21 138:22 142:1,13 159:15 160:5 167:2,4,14 <b>seeing</b> 106:17 <b>seeking</b> 148:20 <b>seeks</b> 64:5 <b>seen</b> 13:23 24:18,24 25:1,8 26:20,22	68:21,23 94:7 107:1 150:8 154:21 <b>select</b> 144:13 <b>self-assessment</b> 129:22 <b>Senate</b> 21:10,13,18 <b>send</b> 33:3,4,6 49:8,9 53:20,23,25 133:5 133:17,17,18,21,24 163:18 <b>sending</b> 162:22 <b>sense</b> 6:21 13:17 20:3 55:8 <b>sent</b> 25:4 33:7 133:8 133:13 146:8,17,18 146:22 <b>sentence</b> 28:19 167:4 <b>SENTRI</b> 95:1 <b>separate</b> 113:4 <b>separately</b> 141:25 <b>September</b> 27:12 <b>serve</b> 109:12 <b>served</b> 83:19 <b>service</b> 12:3,4,8 18:15 20:17 33:18 75:9 99:9 125:22 <b>services</b> 1:11 2:8,13 5:17,20 9:21 10:1 10:22 11:18,20 12:1 12:2,18 13:6 16:16 16:18 17:11,13 18:1 18:6,8,14 23:2,7 26:10 27:25 29:7 41:3 45:5,6 46:10 52:15 53:6 55:18 58:21 66:8 70:9 71:1 74:10 82:10 94:23 110:4 119:15 121:10 137:10,16 137:19 146:18,20 146:24 <b>session</b> 21:11 <b>set</b> 57:19 61:4 69:24 80:9 88:15 98:13 100:9 122:25 126:9	<b>sex</b> 160:9 <b>Shakes</b> 149:23 <b>share</b> 127:18 167:2 <b>shipping</b> 75:13 <b>shorter</b> 164:7 <b>shorthand</b> 1:22 173:5 173:12 <b>shortly</b> 91:16 <b>shot</b> 68:19 69:12 <b>show</b> 48:24 85:15,17 93:13,16 99:22 100:2 <b>showing</b> 36:11,13 48:10,14 50:8 65:14 86:13 <b>shows</b> 86:14 87:8 <b>sibling</b> 86:5 <b>sick</b> 9:3 <b>side</b> 98:15 <b>sign</b> 4:8 36:20,25 52:2,4,6 53:3 171:2 <b>signage</b> 87:19,20 <b>signature</b> 3:4 69:4 80:14 172:1,21 173:14,17 <b>Signed</b> 98:12 <b>similar</b> 104:19 133:8 <b>similarly</b> 7:10 40:1 <b>sir</b> 5:5 13:23 21:21 154:23 171:5 <b>sister</b> 86:12 <b>site</b> 103:17 104:7,10 108:18 110:5,6,9,13 110:15 111:12 112:3,8 118:10,23 119:1,4,19 120:17 123:4 124:7 125:13 125:25 131:1 135:23 138:3 152:22 <b>sites</b> 3:19 102:15 104:3,23 109:8,13 110:17 111:6,13,24 112:2,5 113:12,20 120:6 122:19,23	123:15 129:3 130:4 130:9,15,16,21 131:21 136:14 <b>sitting</b> 19:11 <b>situation</b> 98:7 <b>sit-down</b> 91:23 <b>six</b> 75:18 76:16 77:9 128:13,14,15 <b>size</b> 117:14 128:10 <b>slightly</b> 119:10 <b>slot</b> 135:2,4 159:17 <b>small</b> 117:14 <b>Smith</b> 160:1 <b>SOAH</b> 20:6,8,9 21:6 <b>Social</b> 24:7 73:5 80:22 97:5 98:12 99:3 104:20 <b>society</b> 41:5 <b>soft</b> 100:21,22 <b>software</b> 149:21 153:2,3 <b>solution</b> 151:13,14 <b>solve</b> 163:9 <b>someone's</b> 69:16,22 128:4 161:12 <b>soon</b> 33:11 157:23 <b>sorry</b> 13:8 15:22 17:5 26:6 31:16 47:24 51:4 62:22 63:4 74:17,24 79:7 82:2 86:15 89:6 98:14 109:7,7,7 113:5 140:8 146:6 155:8 155:10 158:7,8 164:10 <b>sort</b> 91:23 92:8 105:3 168:2 <b>sought</b> 86:1 <b>sound</b> 7:14 8:20 117:20 157:12 <b>sounds</b> 46:1 120:1 <b>source</b> 12:3,5,8 23:19 125:22 <b>SOUTHERN</b> 1:1 <b>speak</b> 6:7 19:22
---	---	---	--

VICTOR FARINELLI

5/9/2014

22

63:20 <b>speaks</b> 63:20 64:3 <b>special</b> 35:22 72:9 <b>specialist</b> 12:16 23:8 <b>specific</b> 24:19 26:1 27:2 29:24 30:21,22 36:21 49:25 72:3,13 79:23 90:5 103:22 106:11 112:22 116:4 126:6 136:3,6 136:9 <b>specifically</b> 13:15,16 15:9 16:12 19:25 29:17 32:1 33:22 34:3 36:19 37:16 41:20 53:4 94:11 105:22,25 106:4,7 134:10 138:10,12 140:3 141:8 145:7 146:21 155:13 <b>speculation</b> 99:24 102:4 164:9 <b>speed</b> 89:16,21 <b>spelled</b> 85:7 <b>spelling</b> 54:14 <b>spend</b> 64:15 114:5 125:14 <b>stacks</b> 89:19 <b>staff</b> 17:11 29:23 53:7 91:7,9,11,22 92:2,3 133:2 153:19 <b>staffing</b> 113:2 118:4 130:4 <b>stamp</b> 4:4 148:4 <b>standard</b> 8:19 46:12 46:21 88:6 <b>standpoint</b> 44:25 <b>start</b> 115:14 137:14 170:4,5 <b>started</b> 12:14 142:12 142:16 <b>Starting</b> 43:11 <b>starts</b> 60:13 <b>state</b> 1:21 2:13 4:5 5:5,16 10:1,11,21	11:17 12:3,4,12,13 12:18,22 13:6 14:18 14:19,21 16:16,17 16:24 18:1 19:24 20:1,11,21 21:4 23:2,4 25:19 27:18 29:7,12,16 30:10,13 32:22,24 37:16 41:3 42:10 45:6 46:10 47:5,6 52:15 53:6 55:18 57:23 60:16 66:7 67:7 69:19,23 70:9 71:1 74:10,12 76:4,5 78:2,5,23,25 79:14 81:4,16 82:10 86:22 87:7 94:14,15 94:18 95:3 98:19,20 98:22 99:13 104:12 104:16 109:19 111:16 113:2,6 118:1 119:15 122:24 124:24 125:18 130:4 137:10,15,19 139:4 148:2,5 154:16 155:9,14 156:7,24 165:5 168:19 169:1 173:2,6 <b>stated</b> 34:25 36:8 <b>statement</b> 28:25 36:22 47:23 53:11 67:19 72:7 73:21 <b>states</b> 1:1,17 2:2 5:9 28:20 30:22,23 60:23 63:6 74:12 81:15 94:23 95:3,6 98:18,20 99:8,13,17 99:18,19 101:11 106:18 138:25 139:8,9 148:15 154:13 155:12,23 155:24 156:7,10,14 156:16 173:22 <b>statewide</b> 139:12,19 <b>State's</b> 145:8,10	<b>state-issued</b> 78:13 <b>state-run</b> 78:18 <b>station</b> 122:25 <b>statistical</b> 46:15 <b>statistics</b> 4:5 10:2,5 10:12,20 11:18 23:3 39:16 43:14 46:11 46:13,14,25 58:25 100:17 104:13 109:20 119:16 124:14 125:23 127:24 132:16,24 133:2 144:18 <b>status</b> 4:10 95:1 111:18 155:1 <b>statute</b> 20:16,19 59:10 115:1 <b>statutorily</b> 60:19 148:8,24 <b>statutory</b> 61:1 62:6 62:19,24 114:9,19 114:23 137:17 <b>step</b> 73:19 75:8 <b>stop</b> 48:1 82:16 <b>stopping</b> 109:24 <b>stops</b> 169:19 <b>street</b> 1:23 42:9 82:13 <b>strike</b> 55:21 <b>student</b> 98:4 <b>study</b> 39:1 51:17 <b>stuff</b> 46:2 <b>sub</b> 109:21 121:12,14 121:19 <b>subject</b> 9:12 19:15 <b>submission</b> 35:12,16 41:18 <b>submit</b> 39:11 49:21 52:17,18 80:6,16,19 81:3 93:11 106:25 <b>submitted</b> 25:18 33:5 35:25 49:12 57:23 58:2 90:19 <b>submitting</b> 106:21,22 <b>Subpoena</b> 1:24	<b>Subscribed</b> 174:3 <b>Subsection</b> 59:2,4 <b>subsidize</b> 66:11 <b>substantiate</b> 62:16 <b>successful</b> 143:2 <b>successfully</b> 153:14 <b>sufficient</b> 69:16 79:10,11,15 80:3 96:1 <b>Suite</b> 174:9 <b>summary</b> 44:15,16 46:4,6,6,18 <b>summer</b> 125:17 <b>supervise</b> 124:19 <b>supervisor</b> 129:13 <b>supervisory</b> 109:19 <b>supplies</b> 113:7 130:7 <b>supply</b> 113:6 <b>support</b> 140:24 174:8 <b>supporting</b> 24:6,10 37:11,17 52:8 80:17 80:24 81:3,7,11,15 81:21,22 100:6,8 102:2 162:22,23,25 163:2 <b>supposed</b> 167:25 168:1,5 <b>surcharge</b> 58:14 <b>sure</b> 6:12 7:4 8:16 28:14,16 40:25 44:22 45:7 46:16 50:2 55:1,15 62:9 70:2 73:22 78:20 83:3 90:22 91:20 101:11,20 102:23 105:15 107:23 110:21 116:5 119:5 122:21 123:1 124:22 129:20 130:18 135:21 141:2,6 142:14,17 147:18 157:4 158:3 164:21 165:1 167:15 <b>surprise</b> 167:4,10
--	---	---	---

VICTOR FARINELLI

5/9/2014

23

<b>Survey</b> 155:3 <b>surveys</b> 129:23 <b>swing</b> 31:1 <b>sworn</b> 1:18 5:2 173:10 174:3 <b>system</b> 4:6 10:6 32:12,21 43:16 44:3 68:20 71:6 73:3 92:16 101:4 118:14 118:18 121:17 127:13 128:2,7 134:2 141:21 147:21 148:3 153:12 164:15 <b>systems</b> 127:15 <b>S-E-N-T-R-I</b> 95:2	160:21 <b>Tarrant</b> 117:15 123:24 124:2 <b>team</b> 12:17 <b>technical</b> 39:12 143:11 149:4 <b>technically</b> 40:16 46:9 151:23 <b>technology</b> 38:16 <b>tell</b> 54:7 70:2 94:11 103:13 129:11 166:13 167:3 168:5 <b>telling</b> 112:6 129:13 <b>ten</b> 38:1,17 39:4 47:5 75:3 76:23 83:20 107:3,9 108:1,2,10 <b>term</b> 21:25 22:6 55:7 64:23 108:4,4 <b>terminate</b> 108:21,25 <b>terminated</b> 108:19 109:4 <b>terms</b> 63:13 82:19 105:21,24 106:3,6 106:10 127:6 <b>territory</b> 170:7 <b>test</b> 166:15 <b>testified</b> 5:2 20:4 160:12 <b>testify</b> 16:19 43:1 44:1 141:10 <b>testifying</b> 9:20 12:22 <b>testimony</b> 6:15 9:13 45:20 58:16 160:19 173:13 <b>Texas</b> 1:1,11,21,24 2:7,10,13,15,19,20 5:13,19 9:20 17:13 20:16,17,21 21:4 24:21,23 25:4 26:8 26:25 31:3 32:6,22 34:17 37:14,15 38:1 57:8,19 58:12,13,18 60:22 61:7 72:14 74:11,11 79:5 81:13 81:14,24 86:3,22,24	94:5 95:16,19 98:3 99:7 108:7 111:16 113:6 130:23 134:2 134:3 154:12,16 155:6,14,20,24 156:11 173:2,6 174:9 <b>Texas.gov</b> 33:18 66:6 66:14,21 114:8,16 <b>TexReg</b> 3:10,11 <b>text</b> 59:20 <b>Thank</b> 17:6 19:13 20:3 25:21 27:20 37:24 41:14 42:3 45:25 171:4 <b>therefor</b> 173:18 <b>thing</b> 9:11 13:15 22:9 55:5 124:23 153:17 <b>things</b> 167:7 <b>think</b> 8:10 9:7 22:3 35:4 43:24 45:18,20 73:19,21 109:1 158:25 159:13 164:19,23 166:14 <b>thinking</b> 73:21 <b>third</b> 80:23 111:12 <b>thought</b> 158:9 <b>three</b> 50:12 125:17 145:25 146:2 155:19 162:24 164:16 <b>tier</b> 80:23 <b>Tim</b> 13:9 <b>time</b> 9:17 33:5 38:8 38:11 49:23 64:6,11 66:22 68:2,11,23 70:17 89:20 90:14 112:4 135:2,3 139:15,18 140:4 142:14 143:16 145:21 146:1 152:17 161:25 164:2,6,8,14,15,16 168:13 170:12 171:3,5	<b>times</b> 35:3,6 <b>timing</b> 127:6,7 <b>Timothy</b> 2:13 5:15 <b>Tim.Bray@dshs.st...</b> 2:16 <b>title</b> 3:14 10:10 39:12 57:8,18 81:25 94:6 150:22,24 <b>today</b> 9:3 13:1 16:19 18:25 19:23 40:21 <b>told</b> 54:15 97:9 103:7 103:18 <b>toll-free</b> 164:4,7 <b>top</b> 56:23 57:1 85:2 90:12 114:3 139:8 158:22 <b>Topic</b> 14:14,16,17 15:4,5,10,20 16:3,7 16:8,20,23 17:9,10 17:21 45:21 <b>topics</b> 14:9 17:18 143:18 144:16,17 144:24 <b>total</b> 155:2,7,11,13 155:19 156:2,4 <b>totally</b> 8:19 <b>track</b> 68:10 127:25 136:25 147:19 <b>tracked</b> 68:5,7 141:19,20 <b>tracking</b> 55:11 147:21 <b>train</b> 29:23 30:1 <b>trained</b> 52:20 <b>training</b> 56:24 91:9 91:14,23 106:7 118:12 125:9,12,14 125:15,19,23,24 134:14 135:22,25 136:3 <b>transcript</b> 173:8,16 173:21 <b>transferred</b> 169:21 <b>transit</b> 82:14 122:6,9 <b>transmit</b> 32:14
--	---	--	--

VICTOR FARINELLI

5/9/2014

24

<b>transportation</b> 64:15 <b>travel</b> 29:17 52:16 64:6 94:25 95:1 <b>treated</b> 39:25 <b>Trey</b> 97:14,17 <b>trial</b> 171:3 <b>trip</b> 150:4 <b>trips</b> 123:6 <b>trouble</b> 99:21 <b>true</b> 32:13 58:23 93:3 172:22 173:8,12 <b>truthfully</b> 9:14 <b>try</b> 7:5 132:2 133:17 <b>trying</b> 12:10 63:24 93:25 166:14 <b>turn</b> 14:6 85:3 90:9 101:6 104:2 120:19 120:22,25 138:21 <b>Turning</b> 25:21 <b>two</b> 12:7 18:16 47:22 50:7 70:10 80:19 81:3 82:16 92:20 97:3,7 100:2,6 120:24 162:9,22 167:19 <b>TXHHS</b> 3:22 <b>type</b> 34:2,8 43:17,20 46:18 47:16 82:19 86:15 89:14 105:3 116:16,24 125:12 134:10 <b>types</b> 11:1 44:14 46:21 55:11 127:23 <hr/> <b>U</b> <hr/> <b>Uh-huh</b> 14:15,20 15:19 17:2 31:14 37:20 50:24 59:9,15 60:21 63:11 65:10 68:4 71:13 79:1 90:11 100:4 103:6 108:11 112:1,21 113:25 114:12 <b>unacceptable</b> 72:18 <b>undergo</b> 106:8	<b>underneath</b> 159:2,14 159:15 <b>understand</b> 6:3,12,12 6:16,19 8:22 9:4,15 9:19 14:11 17:14 21:19 22:8,11 23:25 64:22 78:20 161:7 162:19 170:22 <b>understanding</b> 15:25 21:13 22:20,25 24:3 153:21 160:10 <b>understandings</b> 21:22 <b>understood</b> 158:4 167:25 <b>underway</b> 58:2 <b>Unit</b> 10:2,12,20 11:18 23:3 43:15 119:16 <b>United</b> 1:1,17 2:2 5:9 94:23 95:3,6 98:18 98:20 99:8,13,17,18 99:19 155:12,23 156:7 173:22 <b>Universal</b> 155:2 <b>university</b> 78:5 82:23 82:25 <b>unlawfully</b> 99:17 <b>urban</b> 122:2 <b>usage</b> 114:4 <b>use</b> 4:4 23:19 37:11 47:3 64:22 66:2,25 67:1,6 71:19 80:10 86:16 91:10 96:18 97:14 105:9,11,13 106:4 118:17 129:2 134:4 153:23 168:12 <b>user</b> 3:16 101:5 118:14 153:10,12 153:13,18 <b>uses</b> 22:7 47:9 103:17 134:3,4 <b>usual</b> 157:10 <b>usually</b> 107:22 117:10 128:8	135:12 <b>UT</b> 78:8 83:2 <b>U.S</b> 2:3 4:9 29:18 95:2 154:13 156:24 156:25 174:8 <hr/> <b>V</b> <hr/> <b>v</b> 172:2 <b>valid</b> 76:8 80:7 95:13 99:15 158:23 <b>Valley</b> 51:15 <b>value</b> 87:3 <b>variations</b> 85:12,13 <b>varies</b> 156:12 <b>various</b> 11:25 <b>vary</b> 48:20 49:17 117:12 159:24 <b>VEASEY</b> 1:3 172:2 <b>Vehicles</b> 78:16 <b>verification</b> 153:24 <b>verified</b> 49:24 110:7 <b>verify</b> 73:6 153:8 <b>verifying</b> 153:22 <b>versus</b> 45:19 85:8,9 <b>veterans</b> 62:14,15 98:16 <b>Victor</b> 1:12,16 5:1,7 172:3,20,25 173:9 <b>violate</b> 105:10 <b>violating</b> 108:16 <b>violation</b> 20:16,18 105:14 <b>visa</b> 95:5 98:18,20,23 99:12,22 <b>visit</b> 110:9 111:12,24 112:3,9 <b>visits</b> 110:5,6,13,15 125:13,25 129:18 135:23 138:3 <b>vital</b> 4:5 10:1,5,7,11 10:20 11:18 23:3 39:16 43:14 46:14 46:25 58:25 100:16 104:13 106:20 109:20 119:15	124:12,14 125:23 127:23 132:15,24 133:2 144:18 <b>void</b> 106:23 <b>volunteer</b> 109:8 <b>vote</b> 21:16,17 22:19 63:10 93:21 140:10 140:15 <b>voter</b> 4:7 22:16 98:24 134:18 140:3,16,18 145:11,12,15 <b>voters</b> 131:14 132:13 145:5,6 <b>voting</b> 67:3 140:3,7 140:23 <b>vs</b> 1:5 51:25 <b>VSU</b> 144:13 <hr/> <b>W</b> <hr/> <b>W</b> 2:19 <b>wait</b> 7:6,11 82:2 83:18 98:14 116:12 164:6,16 <b>waive</b> 27:4 59:5,6,12 59:13 114:18 137:20 <b>waived</b> 59:1,4 60:19 60:24 148:9 157:16 <b>waiver</b> 62:19,24 65:1 98:20 <b>waivers</b> 62:6 <b>waives</b> 58:17 66:8 <b>waiving</b> 61:25 137:17 <b>walks</b> 88:18 115:23 <b>want</b> 7:16 19:8 44:21 44:24 45:6,10,13 50:20 54:25 55:4 69:15 97:23 109:15 119:22 129:7 159:6 159:7 164:1 <b>wanted</b> 13:11 44:17 46:6 65:19,20,22 90:2 143:17 147:2 158:3 165:18 <b>wanting</b> 21:15
---	---	--	--



VICTOR FARINELLI

5/9/2014

25

<b>wants</b> 28:12,23 29:2 165:14	45:3 50:20 54:22 65:2 89:8 110:3,19 131:16 136:5 144:2	57:16 85:13,13 110:24 115:20,21 116:3,3 117:20 120:16 121:8,16 127:3,3 136:18 140:20 145:16,18 149:11 151:3 154:1 155:21 159:12 160:11,14 163:16 167:13,16	<b>\$5</b> 56:18 76:21,22 <b>\$8</b> 75:15 77:6
<b>Washington</b> 2:4	<b>willingness</b> 141:10		<hr/> <b>#</b> <hr/>
<b>wasn't</b> 91:25 140:14	<b>wish</b> 170:16		<b>#38267</b> 174:7
<b>water</b> 7:9,13	<b>witness</b> 1:17 14:10 20:20 42:25 43:23 63:19,21 64:1 157:6 164:12 169:13 170:25 171:1 172:3 173:9,13	<b>year</b> 11:22 35:7,9,14 35:20 47:15 49:18 49:20 110:15 111:11,25 120:12 125:21 126:1 129:23 139:2	<hr/> <b>0</b> <hr/>
<b>way</b> 8:3 9:3 11:22 12:13 34:22 35:17 39:13 40:13 45:9 48:9,22 54:21 75:16 109:18,18 110:7 134:6 141:21,23,25 144:22 148:23 157:25 167:21	<b>witnesses</b> 5:20	<b>years</b> 11:18,20 38:1 38:18 39:4 47:21 52:1 74:6 98:9 105:12 139:3 145:11	<b>08/07/13</b> 4:7 <b>08/23/13</b> 3:10
<b>ways</b> 23:21 113:17 130:19,25	<b>woman</b> 40:23 95:24		<hr/> <b>1</b> <hr/>
<b>wearing</b> 18:16	<b>words</b> 159:7 162:9,16 165:14		<b>1</b> 10:11,13 12:16 14:14,16,17 45:21 47:6
<b>Web</b> 153:5,8	<b>work</b> 6:11,25 7:20 16:14 64:11 79:9 96:4 133:4		<b>1st</b> 27:19 90:19
<b>website</b> 29:17,17 119:16 121:20,23 132:12,16,21,24 144:1,2,7,11,12	<b>worked</b> 11:20,22 12:13		<b>1:42</b> 1:20 171:6
<b>weekends</b> 83:16	<b>working</b> 12:12 87:25 88:16 91:4		<b>10</b> 116:13
<b>weeks</b> 12:24 27:11 49:18 76:17 142:17	<b>works</b> 5:25 18:11	<hr/> <b>\$</b> <hr/>	<b>10/14/13</b> 4:3
<b>went</b> 58:6 69:1 121:19 134:11 146:11	<b>worried</b> 45:19	<b>\$1</b> 60:4 114:23 115:1 115:2,6 127:2 167:10	<b>10/18/13</b> 3:11
<b>weren't</b> 136:4 140:22 140:24	<b>Worth</b> 124:4	<b>\$1.80</b> 167:8,16,23	<b>100</b> 3:15
<b>west</b> 1:23 82:13,17	<b>wouldn't</b> 9:8 38:3 39:8 53:12 70:2 82:21 83:7 99:19,20 110:20 115:7 117:18 143:3 149:21	<b>\$1.83</b> 105:6 108:20 152:25	<b>102</b> 3:17
<b>we'll</b> 6:25 7:25 8:17 30:15 48:2 50:5 53:20,25 78:1 84:11 119:21 125:14 152:24 163:4	<b>write</b> 163:24	<b>\$10</b> 66:6,13,20 114:8 114:16	<b>106</b> 3:9 13:21,22
<b>we're</b> 7:11 17:12 24:16 33:20 38:16 45:1,18 48:9,10 53:16 59:24,24 65:24 66:5 70:24 73:24 75:12 83:9 110:10 111:1,23 124:11 136:24 142:5	<b>written</b> 34:22 35:18 39:13 48:9,22 92:7 109:19 167:21	<b>\$12</b> 114:3	<b>107</b> 3:10 24:14,15 57:5 63:4 138:22
<b>we've</b> 8:4 12:11 33:6	<b>wrong</b> 16:2 97:9 98:14 163:5	<b>\$15</b> 54:4	<b>108</b> 3:11 26:18,19 58:4 90:10
	<b>wrote</b> 25:12 26:10 148:6	<b>\$2</b> 58:11,14,18 59:1,8 59:19 60:18,23 66:8 114:8,19,22,24 137:17 148:16,19 149:2 167:18,22	<b>109</b> 3:12 68:16,17 71:17
	<hr/> <b>X</b> <hr/>	<b>\$2.00</b> 148:8	<b>11</b> 156:15 158:19
	<b>X</b> 3:1,8 4:1	<b>\$22</b> 29:1 49:11 50:17 50:22 55:19 57:11 57:13,20 58:8 61:6 76:13 126:24	<b>110</b> 3:13 71:22,23,24
	<hr/> <b>Y</b> <hr/>	<b>\$25</b> 49:14 50:18	<b>1100</b> 82:13
	<b>yeah</b> 27:13 50:16,16	<b>\$3</b> 56:11	<b>111</b> 3:14,18 94:2,3
			<b>112</b> 3:15 100:24,25
			<b>113</b> 3:17 102:7,8 158:16,20,20
			<b>114</b> 3:18 111:2,3,4
			<b>115</b> 3:20 119:11,12
			<b>116</b> 3:21 143:22,23 164:22 166:5
			<b>117</b> 3:22 146:4,5
			<b>118</b> 4:3 147:23,24
			<b>119</b> 3:20 4:7 150:6,8
			<b>12</b> 11:18
			<b>12th</b> 25:20 57:24
			<b>12/24/13</b> 3:22

VICTOR FARINELLI

5/9/2014

26

<b>120</b> 4:9 154:19,20 167:15 <b>12548</b> 2:9 <b>13</b> 3:9 <b>14</b> 21:11,14,18,18,23 22:7,13 23:9,21 58:1 93:21 139:20 140:1,12,23,25 <b>14th</b> 1:23 <b>143</b> 3:21 <b>146</b> 3:22 <b>147</b> 4:3 <b>149347</b> 2:14 <b>15</b> 41:23 50:7,11,15 50:16 75:3 76:23 <b>15th</b> 42:2 <b>15,000</b> 155:17 <b>15,248,259</b> 155:17 <b>15-day</b> 41:18 <b>150</b> 4:7 <b>154</b> 4:9 <b>157</b> 3:3 <b>16</b> 74:6 <b>17</b> 52:1 <b>170</b> 51:25 <b>172</b> 3:4 <b>173</b> 3:4 <b>18</b> 145:11 <b>18th</b> 27:15 <b>181</b> 82:1 <b>181.22</b> 57:7,18 <b>181.22(c)</b> 58:15 <b>181.28</b> 3:14 82:3 94:6 <b>181.28(g)</b> 81:25 <b>19th</b> 174:3 <b>1903</b> 42:18,21 <b>191.0045</b> 56:22 <b>191.0045(e)</b> 60:18 148:7 <b>191.022(f)</b> 60:18 148:8 <b>1919</b> 2:14 <b>1987</b> 44:18 46:8 <b>1994</b> 43:11	<hr/> <b>2</b> <hr/> <b>2</b> 12:15 15:4,5,10 28:7 <b>2R</b> 12:4 <b>2s</b> 11:3 <b>2:13-cv-193(NGR)</b> 1:5 <b>20</b> 83:21 84:25 91:6 116:13 139:11 167:9,24 <b>200</b> 110:23 155:8 <b>2008</b> 155:2 <b>2011</b> 21:11 <b>2012</b> 155:2 <b>2013</b> 25:16,20 27:15 27:19 57:24 58:7 90:14,16 141:13,14 <b>2014</b> 1:13,19 173:12 174:4 <b>202.305.4355</b> 2:4 <b>202.307.3961</b> 2:5 <b>20530</b> 2:4 <b>209</b> 1:23 <b>21st</b> 58:7 68:25 90:16 90:20 141:13 <b>21,109,883</b> 155:10 <b>214</b> 98:13 99:6 <b>22</b> 57:8,18 <b>23rd</b> 25:16 <b>24</b> 3:10 <b>25</b> 3:14 10:25 81:25 94:6 135:15 155:7 155:24 <b>26</b> 3:11 <hr/> <b>3</b> <hr/> <b>3</b> 12:14 15:20 16:3,7 16:8,20 17:21 <b>3rd</b> 44:18 46:7 <b>3s</b> 11:3 <b>30</b> 53:17,19 83:21 84:25 156:15 173:16 <b>30s</b> 38:13 <b>30th</b> 67:15	<b>30(b)(6)</b> 1:10 5:20 43:23 44:23 45:2,11 <b>344</b> 174:8 <b>35</b> 135:15 <b>38</b> 3:10,11 <b>380</b> 174:9 <hr/> <b>4</b> <hr/> <b>4</b> 12:14 16:23 <b>4-AUSTIN-161365</b> 174:25 <b>40s</b> 38:13 <b>421</b> 111:15 <b>49th</b> 82:13 <b>4920</b> 2:20 <hr/> <b>5</b> <hr/> <b>5</b> 3:2 17:9,10 <b>5:00</b> 83:13 <b>50</b> 110:14 <b>50s</b> 38:13 <b>512.292.3866</b> 174:10 <b>512.292.4249</b> 174:10 <b>512.374.2725</b> 2:21 <b>512.447.3940</b> 2:21 <b>512.475.0131</b> 2:10 <b>512.776.6966</b> 2:15 <b>512.776.7720</b> 2:16 <b>512.936.0545</b> 2:11 <b>5416</b> 3:10 <hr/> <b>6</b> <hr/> <b>60</b> 51:7 119:7 136:20 138:14 142:7 <b>600</b> 135:8 <b>68</b> 3:12 <hr/> <b>7</b> <hr/> <b>7</b> 101:6 <b>70</b> 110:15 <b>701</b> 174:9 <b>71</b> 3:13 <b>7307</b> 3:11 <b>75</b> 155:18 <b>78701</b> 174:9 <b>78711</b> 2:10	<b>78714</b> 2:15 <b>78751</b> 2:20 <hr/> <b>8</b> <hr/> <b>8:00</b> 83:13 <b>85</b> 119:23 <hr/> <b>9</b> <hr/> <b>9</b> 1:13,19 173:12 <b>9:02</b> 1:20 <b>90</b> 80:15 98:6,11 <b>94</b> 3:14 <b>950</b> 2:3
--	--	--	---